Supreme Court, U.S.
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No. 93-1340

In the Supreme Court of the United States

OCTOBER TERM, 1993

UNITED STATES, PETITIONER

v.

GARY MEZZANATTO, RESPONDENT

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

JOINT APPENDIX

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PETITION FOR WRIT OF CERTIORARI FILED FEBRUARY 22, 1994
CERTIORARI GRANTED APRIL 18, 1994

110 pp

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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA
November 1990 Grand Jury

Criminal Case No. 910739GT

UNITED STATES OF AMERICA, PLAINTIFF

v.

GARY CRAIG MEZZANATTO, DEFENDANT

INDICTMENT

Title 21, U.S.C., Sec. 841(a)(1)—Possession of Methamphetamine with Intent to Distribute

The grand jury charges:

On or about August 1, 1991, within the Southern District of California, defendant GARY CRAIG MEZZANATTO did knowingly and intentionally possess, with intent to distribute, approximately 454 grams (approximately one pound) of methamphetamine, a Schedule II Controlled Substance, in violation of Title 21, United States Code, Section 841(a)(1).

DATED: August 14, 1991.

A TRUE BILL:

_____

Foreperson

WILLIAM BRANIFF
United States Attorney

By: _____

SHANE P. HARRIGAN
Assistant U.S. Attorney

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

Criminal Case No. 910739GT

UNITED STATES OF AMERICA, PLAINTIFF

v.

GARY CRAIG MEZZANATTO, DEFENDANT

DOCKET ENTRIES

8/2/91	1	COMPLAINT Gary Craig Mezzanatto (1) Magistrate Barry T. Moscowitz. Possession of a controlled substance with intent to distribute. (methamphetamine) [3:91-m-3096] (ls) [Entry date 08/07/91]
8/2/91	2	Minutes: Enter Order by Magistrate Barry T. Moscowitz first appearance of Gary Craig Mezzanatto on complaint Attorney Merle N. Schneidewind present; S/A Sara Rapport, preliminary exam 8/15/91 at 9:00am Porter, $100,000 c/cs and nebbia hrg and conds; order filed. set for Gary Craig Mezzanatto (cc: all counsel) Court Reporter: BTM91-303:2773-3061 [3:91-m-3096] (ls) [Entry date 08/07/91]

8/2/91	3	CJA Form 20 Copy 4 (Appointment of Counsel) by Magistrate Barry T. Moscowitz [3:91-m-3096] (ls) [Entry date 08/07/91]
8/14/91	4	INDICTMENT by USA Shane P. Harrigan. Counts filed against Gary Craig Mezzanatto (1) count(s) 1 (cs) [Entry date 08/27/91]
8/15/91	5	Minutes: Enter Order by Magistrate Louisa S. Porter dft Gary Craig Mezzanatto arraigned; not guilty plea entered; Atty David Molinari S/A present;, Motion/Trial setting set for 8/26/91 at 9:00am befo (cc: all counsel) Court Reporter: Tape NO. 91-30-1523-1605 (cs) [Entry date 08/27/91]
8/19/91	6	Minutes: Enter Order by Judge Gordon Thompson Jr. in-court hearing held, pretrial motions set for 10/7/91 at 2:00pm., trial set for 10/22/91 at 9:00am (cc: all counsel) Court Reporter: Ann Butcher (cs) [Entry date 08/27/91]
9/4/91	7	Minutes: Enter Order by Magistrate Barry T. Moscowitz, $100,000 P/S plus TD and co-signature of wife and conditions set for deft. Ordered sealed. Leticia Mezzanatto – C/S/T. Defts motion to modify bond-Granted (cc: all counsel) Court Reporter: BTM91-319:3506-3386 (cs) [Entry date 09/13/91]

9/5/91	8	BOND ($100,000 signed by deft & sureties in the amt of $135,000. t/w Advice of Penalties and Sanctions. Copies of TD of Gary Craig and Leticia Mezzanatto. Issd abst to USM) by Gary Craig Mazzanatto (cs) [Entry date 09/13/91]
9/17/91	9	MOTION for disclosure of identity of govt informant by defendant Gary Craig Mezzanatto, for preservation and production of investigator or informant notes and in position of evidentiary sanctions based upon the disclosure of surveillance evidence, and for discovery of exculpatory evidence (Brady) and inspection (cs) [Entry date 09/23/91]
9/17/91	10	MEMORANDUM by defendant Gary Craig Mezzanatto in support of [9-1], of (9-2], of [9-3], [9-4] (cs) [Entry date 09/23/91]
9/18/91	–	Received ORIGINAL TD of Gary Craig and Leticia Mezzanatto for 12158 La Cadena Drive, Colton, CA 92324 in the amt of $100,000. TD given to financial. (cs) [Entry date 09/24/91]
9/30/91	11	MEMORANDUM by plaintiff USA in opposition to [9-1], to [9-2], to [9-3], to [9-4] t/w statement of facts (cs) [Entry date 10/01/91]
9/30/91	11	MOTION for reciprocal discovery by USA as to Gary Craig Mezzanatto (cs) [Entry date 10/01/91]

10/7/91	12	Minutes: Enter Order by Judge Gordon Thompson Jr. granting motion for reciprocal discovery by USA as to Gary Craig Mezzanatto [11-1], granting motion for disclosure of identity of govt informant by defendant Gary Craig Mezzanatto [9-1], granting motion for preservation and production of investigator or informant notes and imposition of evidentiary sanctions based upon the destruction of any investigator or informant notes [9-2], granting motion for disclosure of surveillance evidence [9-3], granting motion for discovery of exculpatory evidence (Brady) and inspection [9-4]; Jury trial date of 10/22/91 confirmed (cc: all counsel) Court reporter: Ann Butcher (cs) [Entry date 10/09/91]
10/7/91	13	Minutes: Enter Order by Judge Gordon Thompson Jr. (cc: all counsel) (cs) [Entry date 10/09/91]
10/21/91	14	TRIAL Memorandum by plaintiff USA (cs) [Entry date 10/22/91]
10/22/91	15	Minutes: Enter Order by Judge Gordon Thompson Jr. preliminary exam vacated pretrial motions vacated trial set for 12/17/91 at 9:00am; Merel Schneidewind relieved (cc: all counsel) Court Reporter: Ann Butcher (cs) [Entry date 10/23/91]

10/22/91	16	Ex parte application for order shortening time for filing of motion to substitute counsel and continue trial; Declaration of Richard C. Chier. (cs) [Entry date 10/23/91]
10/22/91	17	MOTION for appointment of counsel by defendant Gary Craig Mezzanatto t/w Ps & As (cs) [Entry date 10/23/91]
10/22/91	18	ORDER by Judge Gordon Thompson Jr. granting motion for appointment of counsel by defendant Gary Craig Mezzanatto [17-1 Richard C. Chier (cc: all counsel) (cs)] [Entry date 10/23/91]
10/22/91	18	ORDER by Judge Gordon Thompson Jr. withdrawing attorney Merle N. Schneidewind for Gary Craig Mezzanatto and substituting attorney Richard C. Chier (cc: all counsel) (cs) [Entry date 10/23/91]
10/22/91	19	Minutes: Enter Order by Judge Gordon Thompson Jr. (cc: all counsel) (cs) [Entry date 10/23/91]
10/24/91	20	SEALED document by defendant Gary Craig Mezzanatto (Minute order/ Bench warrant) (cs) [Entry date 10/25/91]
11/20/91	21	MOTION to substitute attorney by defendant Gary Craig Mezzanatto, for order continuing trial, t/w p's and a's (gj) [Entry date 11/26/91]

11/20/91	21	ORDER by Judge Gordon Thompson Jr. granting motion to substitute attorney by defendant Gary Craig Mezzanatto [21-1], granting motion for order continuing trial, t/w p's and a's [21-2] (cc: all counsel) (gj) [Entry date 11/26/91]
12/13/91	22	PROPOSED Voir Dire by plaintiff USA (cs) [Entry date 12/24/91]
12/13/91	23	Requested Jury Instructions by plaintiff USA (cs) [Entry date 12/24/91]
12/17/91	24	Minutes: Enter Order by Judge Gordon Thompson Jr. case reassigned to to Judge Earl B. Gilliam (cc: all counsel) (cs) [Entry date 12/26/91]
12/17/91	25	Minutes: Enter Order by Judge Earl B. Gilliam 1st Day-jury impaneled, voir dire begins, Swore witnessed, filed exhibits; trial cont to 12/18/91 at 9:00am (cc: all counsel) Court Reporter: Lee Ann Pence (cs) [Entry date 12/26/91]
12/18/91	25	Oral motion for judgment of acquittal by defendant Gary Craig Mezzanatto (cs) [Entry date 12/27/91]

12/18/91	25	Minutes: 2nd Day—Enter Order by Judge Earl B. Gilliam denying motion for judgment of acquittal by defendant Gary Craig Mezzanatto [25-1]; Juror #3 excused & alt Juror #1 seated as Juror #3. Swore witnesses, filed exhibits Trial cont to 12/19/91 at 9:00am; (cc: all counsel) Court Reporter: (cs) [Entry date 01/03/92]
12/19/91	25	Minutes: Enter Order by Judge Earl B. Gilliam 3rd Day—trial held, Jury retires at 3:10pm and returns at 3:50pm. Ordered meals at govt expense while deliberating. (cc: all counsel) Court reporter: Lee Ann Pence (cs) [Entry date 01/03/92]
12/19/91	26	Requested Jury Instructions by defendant Gary Craig Mezzanatto (cs) [Entry date 01/03/92]
12/19/91	27	Minutes: Enter Order finding Gary Craig Mezzanatto guilty Gary Craig Mezzanatto (1) count(s) 1 (cc: all counsel) Court Reporter: Lee Ann Pence (cs) [Entry date 01/03/92]
12/19/91	25	Minutes: Enter Order by Judge Earl B. Gilliam Ref to P/O & sentencing hearing set for 2/24/92 at 9:00am (cc: all counsel) Court Reporter: Lee Ann Pence (cs) [Entry date 01/93/92]

2/24/92	28	Minutes: Enter Order by Judge Earl B. Gilliam sentencing hearing cont to 3/9/92 at 9:00am (cc: all counsel) Court reporter: Pat Strobel (cs) [Entry date 03/18/92]
3/9/92	29	OBJECTIONS to Presentence Report; & Declaration by defendant Gary Craig Mezzanatto (cs) [Entry date 04/08/92]
3/9/92	30	Minutes: Enter Order by Judge Earl B. Gilliam sentencing hearing cont to 3/11/92 at 1:30pm (cc: all counsel) Court Reporter: Lee Ann Pence (cs) [Entry date 04/08/92]
3/9/92	31	MOTION for new trial by Gary Craig Mezzanatto (cs) [Entry date 04/08/92]
3/9/92	32	MEMORANDUM by defendant Gary Craig Mezzanatto in support of [31-1] (cs) [Entry date 04/08/92]
3/11/92	33	Minutes: Enter Order by Judge Earl B. Gilliam sentencing hearing cont to 3/30/92 at 9:00am (cc: all counsel) Court Reporter: Pat Strobel (cs) [Entry date 04/08/92]
3/16/92	34	MOTION for new trial by Gary Craig Mezzanatto (cs) [Entry date 04/08/92]
3/16/92	35	MEMORANDUM by defendant Gary Craig Mezzanatto in support of [34-1] (cs) [Entry date 04/08/92]

3/16/92	36	OBJECTIONS to Presentence Report; Declaration by defendant Gary Craig Mezzanatto (cs) [Entry date 04/08/92]
3/23/92	39	RESPONSE by plaintiff USA to [36-1], to [29-1] (cs) [Entry date 04/23/92]
3/26/92	40	Motion for order shortening time by Judge Earl B. Gilliam (cc: all counsel) (cs) [Entry date 04/23/92]
3/26/92	41	RESPONSE and opposition to deft's motion for a new trial by plaintiff USA (cs) [Entry date 04/23/92]
3/30/92	37	Minutes: Enter Order by Judge Earl B. Gilliam denying motion for new trial by Gary Craig Mezzanatto [34-1], denying motion for new trial by Gary Craig Mezzanatto [31-1] sentencing hearing held;, sentencing Gary Craig Mezzanatto (1) count(s) 1. Count 1-Custody of BOP for imprisonment for a period of 170 months. Supervised release for term of 5 years. No fine imposed. Assessment $50.00 to be paid immediately., case terminated (cc: all counsel) Court Reporter: Lee Ann Pence (cs) [Entry date 04/08/21]

3/30/92	38	JUDGMENT and Commitment issued to U.S. Marshal for Gary Craig Mezzanatto by Judge B. Gilliam. Entered 4/8/92. (cs) [Entry date 04/08/92]
4/7/92	42	Minutes: Enter Order by Magistrate Roger C. McKee withdrawing attorney Richard C Chier for Gary Craig Mezzanatto and substituting attorney Mark Lippman (cc: all councel) (jm) [Entry date 04/28/92]
4/7/92	43	FINANCIAL AFFIDAVIT by defendant Gary C. Mezzanatto of Gary Craig Mezzanatto (jm) [Entry date 04/28/92]
4/7/92	44	CJA Form 20 Copy 4 (Appointment of Counsel) by Magistrate Roger C. McKee appointing Mark Lippman (jm) [Entry date 04/28/92]
4/8/92	46	Notice of Appeal by defendant Gary Craig Mezzanatto from Dist. Court decision entered 4/8/92; Receipt No/Amt of Fee: ifp [38-1](cc: all counsel) (jm) [Entry date 05/01/92]
4/8/92	–	Docket Modification (Utility Event) (jm) [Entry date 05/01/92]
4/13/92	45	TRANSCRIPT order form for dates 8/2/91; 8/15/91; 10/17/91; 10/18/91; 10/19/91 and 2/24/92 [45-1] (jm) [Entry date 08/27/91]

4/21/92	–	Received Order for appeal time schedule from USCA (jm) [Entry date 05/01/92]
4/21/92	–	Record on Appeal sent to Circuit Court (jm) [Entry date 05/01/92]
4/24/92	47	TRANSCRIPT order from 10/7/91, 10/22/91, 12/17/91, 12/18/91, 12/19/91, 2/24/92, 3/9/92, 3/11/92, 2/30/92 [46-1] (cs) [Entry date 05/15/92]
5/12/92	–	Notification by Circuit Court of Appellate Docket Number 92-50261 (cs) [Entry date 05/13/92]
5/18/92	–	Reporter's Transcript of proceedings for the following court date of 10/22/91 – JURY TRIAL taken in San Diego before Judge Thompson by Ann Butcher (cs) [Entry date 05/20/92]
6/12/92	–	Reporter's Transcript of proceedings for the following date(s): 10/7/91 (Motion Hrg) taken in San Diego before Judge Thompson (Re: [46-1]) (cs) [Entry date 06/17/92]
6/12/92	–	Reporter's Transcript of proceedings for the following date(s): 12/17/91 (Trial-First Day) taken in San Diego before Judge Gilliam (Re: [46-1]) (cs) [Entry date 06/17/92]

6/12/92	–	Reporter's Transcript of proceedings for the following date(s): 12/18/91 (Trial-Second Day) taken in San Diego before Judge Gilliam (Re: [46-1]) (cs) [Entry date 06/17/92]
6/12/92	–	Reporter's Transcript of proceedings for the following date(s): 12/19/91 (Trial-Third Day) taken in San Diego before Judge Gilliam (Re: [46-1]) (cs) [Entry date 06/17/92]
6/12/92	–	Reporter's Transcript of proceedings for the following date(s): 2/24/92, 3/9/92, 3/30/92 (Motions & sentencing) taken in San Diego before Judge Gilliam (Re: [46-1]) (cs) [Entry date 06/17/92]
6/12/92	–	Reporter's Transcript of proceedings for the following date(s): 3/11/92 taken in San Diego before Judge Gilliam by T. Pat Strobel (Re: [46-1] (cs) [Entry date 06/17/92]
12/18/92	48	Minutes: Enter Order by Judge Earl B. Gilliam On courts own motion – Bond Exonerated for Gary Craig Mezzanatto (sh) [Entry date 12/21/91]
1/26/93	–	Record on Appeal sent Circuit Court (sh) [Entry date 01/27/93]
1/26/93	–	Mailed Original Clerk's record on appeal to USCA, Reporter's transcripts in one set of seven volumes only (sh) [Entry date 01/27/93]

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

Criminal Case No. 910739GT

UNITED STATES OF AMERICA, PLAINTIFF

v.

GARY CRAIG MEZZANATTO, DEFENDANT

[Excerpts from Trial Transcript pp. 258-380]

[258] THE COURT: Folks, now you have heard the prosecution side of the case, they have now rested. And now we turn to the defense.

Mr. Mezzanatto, state your full name and spell your last name, sir.

THE WITNESS: My name is Gary Mezzanatto, Gary Craig Mezzanatto, M-E-double Z-A-N-A-T-T-O.

DIRECT EXAMINATION

BY MR. CHIER:

Q. Mr. Mezzanatto, How old are you, sir?

A. 40 years old.

Q. And what is your business or occupation?

A. I am an electrician, work for the Santa Fe Railroad.

Q. Are you presently employed by anybody?

A. At this time I am laid off.

Q. And in August of 1991, were you actively employed or were you in some other status?

A. I was still on layoff status, yes.

Q. What is your martial status, sir?

A. Right now my wife and I are in a reconciliation aspect of our marriage.

Q. Do you have any children with your wife?

A. Yes, I do, I have three. Tyler, my oldest, is 14; Brandon, my middle son, is 12; Chelsea is my youngest daughter, she is 7.

[259] Q. Now, have you had any—have you served in the military, Mr. Mezzanatto?

A. Yes, I have.

Q. And when have you served and where have you served?

A. When, in the years between 1970 and '73 active duty, and from '73 to '78 as a naval reserves.

Q. Where were you on active duty, sir?

A. I was stationed here in San Diego. I served two overseas tours of duty for nine months at a time.

Q. Where?

A. And I served in the Vietnam War, and I received combat awards—Vietnam service medals. Actually I have five of them.

Q. Where have you lived the past 30, 35 years?

A. I lived my whole life in the Inland Empire, which is the San Bernardino area. I lived in Fontana, went to school at Fontana High. Got married, moved to Colton. And about that third year—I shouldn't say the third year—yeah, about the third year, my oldest son was six months old when we moved to Colton.

Q. What was the extent of your education?

A. High school graduate.

Q. And have you gone to any kind of trade school? Or how did you learn your trade?

A. I was employed at Kaiser Steel, which was the largest [260] steel mill on west coast, when I got out of the service in '73. And I was employed with them for nine and a half years. And I was electrician's helper for that time.

Kaiser Steel, as you know, is now defunct in terms of steel mills, and I got me a job at the Santa Fe Railroad in San Bernardino from that time after. I was hired in 1981. I think my – I think Kaiser's layoff date was like '79. I was on call, they were like phasing it out.

Q. Mr. Mezzanatto, let me try to keep your answers somewhat responsive to the questions, if you would. We have to proceed by the question-and-answer method.

In August – let's direct your attention – let me ask you this. Prior to August 1991, had you ever been arrested before?

MR. HARRIGAN: Objection. Irrelevant.

THE COURT: Sustained.

BY MR. CHIER:

Q. Have you ever been convicted of a felony, Mr. Mezzanatto?

MR. CHIER: Objection. Irrelevant, your honor.

THE COURT: Sustained.

MR. HARRIGAN: I ask Mr. Chier not to go into this area. He knows it is wholly irrelevant to the issues in this case.

THE COURT: He knows that.

[261] MR. CHIER: His good character?

THE COURT: He can't testify to that. That is not character evidence. That is self-serving, that is not relevant here.

MR. CHIER: Okay.

BY MR. CHIER:

Q. Mr. Mezzanatto, do you know an individual named Gordon Shuster?

A. Yes, I do.

Q. Do you know when you met the person named Gordon Shuster?

A. Pardon me?

Q. When did you meet him, sir?

A. It was early March of this year, my first encounter with Gordon.

Q. Do you remember how you met him?

A. Yes, I do.

Q. Can you tell us how?

A. Mutual friend of ours. I was with him when he went to visit Gordon, and they were – I was just with another person that knew Gordon.

Q. Now, in August of 1991, let me understand what your situation was vis-a-vis your family. Were you living with your family or not with your family, or what was happening?

A. At that time I was just – I was still separated, yes.

[262] Q. And was the person, the mutual friend, some single person that you ran around with at that time?

A. Yes.

Q. And where did your wife and children live in August 1991?

A. At the Colton address, 12158 South La Cadena Drive.

Q. Was that the address that was on the package that was received into evidence in this case?

A. Yes, sir, it was.

Q. Now, where were you living at that time?

A. I was living—at that particular time I was living with this friend of mine that—I was just partaking into moving into another residence.

Q. Do I understand that your meeting, your first meeting, of Gordon Shuster took place at his—

A. Yes.

Q. —House or what is it, trailer?

A. At his house.

MR. HARRIGAN: Objection. Leading.

THE WITNESS: His residence.

THE COURT: Overruled at this point. That is not too out of the way.

Why don't you wait for him to ask the question before you start to answer. It will be more intelligible for everyone. Let him finish, then you answer.

[263] BY MR. CHIER:

Q. Where did you actually meet Mr. Shuster for the first time?

A. At his residence.

Q. What did his residence consist of?

A. A trailer on a piece of property that was unbeknown to me how big it was because it was at dark at the time.

Q. Did you have occasion to see Mr. Shuster a second time after the initial meeting?

A. Yes.

Q. How did that happen?

A. This mutual friend of ours said that Gordon needed some electrical work done, he didn't have any power, they were on a generator supply for power. And he was going to have the Edison Company install some electric on

the property, and he wanted to know if I could do some electrical work.

Q. So did you visit the location with a view toward establishing some sort of business relationship?

MR. HARRIGAN: Objection. Leading.

THE COURT: Sustained.

BY MR. CHIER:

Q. Did you make some attempt to do business with Mr. Shuster?

A. Yes, I did.

Q. And did you do business with Mr. Shuster?

[264] Q. Yes, I did.

Q. Did you develop some kind of a relationship with Mr. Shuster?

A. Yes, I did.

Q. Could you describe for the jury the relationship that you developed with Mr. Shuster?

A. Basically, Gordon was an individual that was an interesting character. He wanted some work done that interested me, because I was unemployed. I went down to research the project he had entailed me to do, but he didn't have the power, so it wasn't—he was going to move a trailer or mobile home on this property, and he wanted me to like set up the power supply for him, which I am fully capable of doing.

Q. And did these business dealings with Mr. Shuster lead to some sort of personal relationship between the two of you?

A. Yes, it did.

Q. And did you then visit with Mr. Shuster on some other basis, other than business?

A. Yes, I did. We became friends and I was welcomed on his property at any time. And I actually became a handyman of sorts for him, because the electrical end, there was nothing for me to do, the power wasn't there. So I was entailed to do other jobs, cleaning up, fixing equipment. He had tractors, heavy-duty equipment.

[265] Q. Now, were you making any money as a result of doing these odd jobs for Mr. Shuster?

A. Yes, I was.

Q. How much were you making?

A. Gordon paid me $100 a day for me to go down there, up to 300 a week.

Q. Was this at a time when you had no regular employment of any kind?

A. Yes, it was.

Q. What was your understanding as to what Mr. Shuster was doing for a living at that time?

A. He was—he told me he was a shipbuilder.

Q. Did you ever see any evidence of his building ships?

A. Yes. He took me to a place in San Marcos that had like a 70-foot boat that he was building. And his property he had a warehouse, what I call a warehouse, it was more like a garage, six or seven garage with just one door on it, really a building, that he had a number of tools and woodworking apparatuses, planes, and things. And he had like big pieces of lumber that he used to patch this boat up—or make this boat with, I should say.

MR. HARRIGAN: Objection, your Honor. We are getting into a narrative. I would like to keep it to a response.

THE COURT: That answer will stand. Let's have the [266] next question.

We will try not to have you answer in the narrative because we want a question and an answer.

THE WITNESS: Yes, your Honor.

BY MR. CHIER:

Q. Now, as time moved on, did you continue seeing Mr. Shuster?

A. Yes, I did.

Q. And did you get kind of friendly with him on a personal level?

A. Yes, I did.

Q. Did he ever reveal to you that he had some other type of employment beside the shipbuilding or boat building?

A. Yes, he did.

Q. What was revealed to you in that regard?

A. He told me that he was a special agent for the CIA and he made plastic explosives. And that him and the owner of the property were involved in this operation.

Q. The owner of which property?

A. The property that Gordon was living on.

Q. This is the Rainbow Canyon or Rainbow, California property?

A. The residence is in Rainbow.

Q. All right. Now, when he told you that about himself, did you believe him?

[267] A. Yes, I did.

Q. Why did you believe him? What was believable about him in that regard?

A. Because all around the yard there are containers of certain types of chemicals and whatnot that he told me that is what it was for.

Q. What about him personally made him believable as a person who would be a CIA agent, in your mind?

A. He was a real knowledgeable individual. He was real convincing. He was intellectual. He was interesting. I enjoyed listening to him. He has a lot of stories to tell about different things in the world that he had done.

Q. Had you ever seen plastic explosives before?

A. No, sir, I hadn't.

Q. Do you know if you have ever seen them?

A. No, sir.

Q. Did you ever become concerned that if there were plastic explosives on the premises that it might be risky to yourself?

A. Yes.

Q. Did you may any inquiry about this?

A. I asked him if any, like, I didn't want to get blown up, because there was things all over around the yard there. He said not to worry because if you kept them separate there was no danger.

[268] Q. Did Mr. Shuster have other projects that he was working on besides boat building and plastic explosive making?

A. Yes. He was – yes.

Q. Wait for the next question, Mr. Mezzanatto.

Did he have other business type projects?

A. Yes, he did.

Q. Did he ever get you to invest in any of them?

A. Yes, he did.

Q. As I understand it, you were an unemployed electrician at this time, right?

A. Yes.

Q. Where would you get money to invest in anything?

A. From savings that I had.

Q. How much money did you invest with Mr. Shuster?

A. I invested up to $3,000.

Q. And what type of investment did you make with Mr. Shuster?

A. It was a gold recycling from the ocean water.

Q. What did he tell you about the nature of this process that caused you to invest in it?

A. He actually told me there was a 3-to-1 return on the money. Guaranteed.

Q. What was supposed to happen as a result of this process?

MR. HARRIGAN: I object to his leading, your Honor.

THE COURT: That one happened not to be leading, the [269] others have been. Watch your leading. What was supposed to happen was not leading, and that is the question pending.

What was supposed to happen?

THE WITNESS: In the business aspect? I am not understanding the question.

BY MR. CHIER:

Q. I take it that he said there was some process that –

A. Oh, yes.

MR. HARRIGAN: Objection. That is leading.

THE COURT: That is leading.

What happened in the process, is that what you want to ask him?

BY MR. CHIER:

Q. What can you explain –

A. Okay. You want me to explain the gold situation. What I was told actually what happened was that his

father had government leases on Camp Pendleton—

MR. HARRIGAN: Object. Not being responsive.

THE COURT: Sorry about that, you don't have standing on that, that is his. Relevancy is your objection.

MR. HARRIGAN: I object to relevancy.

THE COURT: Is that the response you want from him?

MR. CHIER: No, your Honor.

THE COURT: You want to object to it?

MR. HARRIGAN: I object as to relevancy all along, [270] your Honor. We are going a little far afield.

THE COURT: It may sound like it. Let's have another question.

THE WITNESS: Excuse me, but I am lost here.

THE COURT: You don't have to worry about it. All you have to do is just think about the question, and you come up with the answer if you know the answer. It is an answer, yes, or no, or I don't know, so you have four options.

He is going to ask you a question. Just listen to what he says, what he asks you, and just answer it.

BY MR. CHIER:

Q. What type of venture was described to you that got you to put your own money into it?

A. That he had a process that he could reclaim gold from the ocean through carbon—he explained it that he could get carbon and make it magnetized into gold.

MR. HARRIGAN: Object. Relevancy again, your Honor.

THE COURT: It is kind of interesting, but I would like to see counsel over here just a moment. If that was the process he explained to him.

(Whereupon, the following proceedings were had at the bench, outside the hearing of the jury:)

THE COURT: That is not why I called you over here, if the guy said he could fly to the moon that is permissible. That is how gullible he might be, you are entitled to do [271] that.

The biggest problem I have, I have a wife that is helping him testify. He starts to talk, she does this; (demonstrating) positive answer, she does this (demonstrating).

MR. CHIER: I guess she is trying to help me more than him.

THE COURT: Well, I can't have her doing that.

MR. CHIER: How do we handle this?

THE COURT: I am going to exclude her. I will caution her this time, but if she continues we are going to put her out.

MR. CHIER: I will have a word with her.

THE COURT: Yes. Tell her, take her outside and tell her I can't have her helping.

MR. CHIER: I didn't see it.

THE COURT: Of course. That is why I have the position where I get to look a[illegible]nd the whole courtroom.

MR. HARRIGAN: Are we going to go much further? I don't see the relevance.

THE COURT: What is your offer of proof?

MR. CHIER: This all goes to state of mind. He trusted this man, Gordon Shuster, implicitly. I explained and I told the jury he was gullible, that he was easily misled, and that if Gordon Shuster—

[272] THE COURT: We are going to recess this trial and I am going into that ocean, see if I can find that gold.

(Laughter)

MR. CHIER: These are things that actually happened.

MR. HARRIGAN: It doesn't go to his state of mind of whether he knew that was methamphetamine or not.

MR. CHIER: I have to set the stage.

THE COURT: What else are you going to put in, he believed in him so much he was willing to invest the money and go and carry the drugs?

MR. CHIER: He was given a package on the day before the arrest by Mr. Shuster, who obviously was concerned about his situation that was developing at the ranch there.

THE COURT: What other factors, other than the fact he could help reclaim gold from the ocean, do you have to show he is gullible? And he invested $3,000. That is it?

MR. CHIER: The fact he told him about the explosive making and the CIA.

THE COURT: So you are done with it?

MR. CHIER: Yes.

THE COURT: I won't have any more that shows gullibility. Take a moment and talk to her and tell her I won't have it. I will have to have her leave the courtroom.

(Whereupon, the following proceedings were had in open court, in the hearing of the jury:)

[273] THE COURT: Why don't you folks step into the jury room for a moment, please. We will have you back in just one minute.

(Whereupon, the following proceedings were had in open court, outside the hearing of the jury:)

THE COURT: Mrs. Mezzanatto, there is no if or and about it, there is no halfway ground. If you are going to stay in court you are going to have to maintain composure, without a smile, without this, without this. So there is no ifs and ands about it. If you want to stay in, then don't do those things as you sit there.

That is all I have to say about it. So you don't have to explain anything? Okay?

Now, Mr. McDonald, get the jury back.

THE CLERK: Yes, sir, your honor.

THE COURT: Do you have word on your witnesses?

MR. CHIER: I have the proof of service. According to Mr. Sweet, who is a licensed operative for Mr. Lopez's office, they called him early this morning and said they were having problems with the road because of the rain.

THE COURT: I can certainly appreciate that.

MR. CHIER: They claim they are on their way.

THE COURT: Okay. We will get them for the afternoon session. They should make it here.

The only alternative is to ask you to leave the [274] courtroom, and I don't want to do that. This is your husband, you are entitled to stay.

MRS. MEZZANATTO: I will sit on my hands, because this was not directed at him.

THE COURT: Well—

MRS. MEZZANATTO: I understand, and I will sit on my hands.

THE COURT: Okay.

(Whereupon, the following proceedings were had in open court, in the hearing of the jury:)

THE COURT: We are all together again now. Everyone is present.

BY MR. CHIER:

Q. Let me ask you this, Mr. Mezzanatto. Did you ever get any paperwork or any kind of receipt or anything for the money you invested with Mr. Shuster?

A. No, I didn't.

MR. HARRIGAN: Objection. Leading.

THE COURT: Overruled.

BY MR. CHIER:

Q. Did you ever?

A. No.

Q. Now let me take you to the day before you were

arrested. Do you remember what day you were arrested on?

A. Yes, sir, I do.

[275] Q. Was that August 1st?

A. Yes.

Q. Let's go to the day before August 1st, July 31st. Did you have occasion to be at Mr. Shuster's house on that day?

A. Yes, I did.

Q. What kind of car were you driving?

A. I was driving the black Camaro, with "Mr Nini" license plates.

Q. With "Mr Nini" license plates?

A. Personalized yes.

Q. Who was that registered to?

A. Fred DeLarosa.

Q. Was that somebody you knew?

A. I knew his son.

Q. What was the name of the son?

A. Steve DeLarosa.

Q. What brought you to Mr. Shuster's house on the day before the arrest?

A. Gordon had paged me to come down and help him out on some more aspects of moving.

Q. And what time of day did you go to his house, Mr. Mezzanatto?

A. Roughly about 10:30, 11:00, in the noon hour. It varied.

Q. Can you describe for the jury what happened, what was [276] said, and how people were acting when you went to Mr. Shuster's house on the day before the arrest.

A. On the day before the arrest when I went down there, Gordon was nervous, kind of like. He wasn't Gordon. He was somebody that had some things on his mind. And he told me that things didn't seem right, things were

fishy or whatever around there, that the neighbor had become nosey in his business of making explosives.

Q. And did he ask you to do anything? Did he give you anything?

A. Yes, he did.

Q. Can you tell us about that?

A. He gave me that brown mailer that is in evidence. It was sealed, stapled together. And he told me to hang onto it.

Q. Until when?

A. Until he called for it.

Q. Was there any writing on there at the time he gave it to you?

A. No, there wasn't.

Q. Did you put any writing on there?

A. Yes, I did.

Q. Why did you put writing on that package?

A. Because he said, "Put an address on there."

Q. Did you have a pager on August 1st, 1991?

[277] A. Yes, I did.

Q. Did you have a pager when you met Mr. Shuster in March of 1991?

A. No, I didn't.

Q. And could you tell us the circumstances under which you invested in a pager?

A. Yes. Gordon used to call me on the phone, I have an answering service. But in the courses of my life outside of Gordon, I had other jobs that I would do, I would do other side jobs, or I just wouldn't be home. So when he would call, he would want me to respond when he would call. When I get home and answer the messages, I would call him back.

He would say, "Why don't you buy a pager?" He said, "Every time I try to get ahold of you, you are missing out on money."

It made sense to me, so I purchased a pager.

Q. You said "answering service."

A. Telephone recorder.

Q. You mean an answering machine?

A. Exactly.

Q. Now, how long would you say that you spent at Mr. Shuster's on the day before August 1st?

A. In terms of visits or how long before the day of August 1st?

Q. How long were you at his place?

[278] A. Oh, his place. That particular day I was there probably a couple of hours.

Q. Now, let me move on to the following day, August 1st, 1991. Did you have some prearranged plans for that day that were totally independent of anything between you and Mr. Shuster?

A. Yes, I did.

Q. What were those plans?

A. My second to oldest son was playing in the Little League Allstars and they were in the sectionals at that particular time of the tournament that Southern California has. I had planned to go to his Allstar game that night.

Q. From what time of day to what time of day were your plans for being with your children, your son?

A. During the game, and it is usually about two hours before we have to travel to the site, it takes an hour, the coach likes them to be there an hour before the game to go through the pregame warmups and whatnot.

It is usually about an hour after the game we stand around and talk about it or head on home—maybe not an hour, maybe half an hour, 45 minutes. Everybody leaves and goes home.

Q. At about 2:30 on the 1st of August, did you receive any kind of a communication from Mr. Shuster?

A. Yes, I did.

[279] Q. What happened?

A. He paged me and wanted to know if I could bring the package back to him.

Q. Let's take this one step at a time. He paged you by calling your little pager?

A. Yes.

Q. And, by the way, what name did you acquire the pager in?

A. I bought it under my name.

Q. And what address did you give them?

A. I gave them my apartment address where I was living at the time.

Q. Did you subsequently ever change that?

A. Yes, I did.

Q. Why did you?

A. Gordon insisted on it. When he found out that I had bought a pager under my name, he didn't think it was real nice that I had something that could trace my connection with him with it. It wasn't—

Q. Mr. Mezzanatto, so did you change the registration of this pager?

A. Yes, I did.

Q. How did you do that?

A. I wrote the company I bought it from and gave them a fictitious name that I sold it to.

Q. Did you give them a fictitious address as well?

[280] A. No, I didn't

Q. What kind of address did they end up with?

A. They ended up with the the address where I was living at that I had moved to, after I left the apartment.

Q. Now, when Mr. Shuster paged you on the 1st of August, did you return the call?

A. Yes, I did.

Q. Did you return it quickly or at leisure?

A. At leisure.

Q. When you returned the call, did you speak to Mr. Shuster?

A. Yes, I did.

Q. Can you tell us what was said by each of you, if you remember it?

A. Yeah. He wanted to know like what I was doing and if I could come down and visit him.

Q. What did you tell him?

A. I explained to him that we had an Allstar game that day and my kids and I were going to be – in the late afternoon, and I couldn't, with the time span of travel, couldn't come down to see him.

Q. Is that how you left it?

A. At that particular time, yes.

Q. All right. Were there additional pages later in the day?

[281] A. Yes, there was.

Q. One or more than one?

A. More than one. Five or six. A number of them.

Q. Did you answer all of them, any of them, or none of them?

A. I answered most of them. There was a span where during the course of the game I didn't answer them, no.

Q. Was he making any particular request of you when you would return the call?

A. Yes, he wanted me to come down and there would be something in it for me.

Q. Did he ask you to bring anything?

A. Yes, he asked me to bring the package he gave me the day before.

Q. Did you continue to tell him you were not able to do it because of your commitment to your children?

A. Yes. I told him that I would see what I could do,

but I couldn't do it at that time. If you allow me to deliver it –

Q. Wait until I ask a question. I am sorry. I am trying not to lead and trying not –

A. Yeah, I sense something here.

Q. At some point during the course of these pages and these conversations you were having, did Mr. Shuster make you an offer, so to speak, that you couldn't refuse?

[282] MR. HARRIGAN: Objection. Leading, Your Honor.

THE COURT: He can answer that yes or no. It is not leading.

Did he make an offer you couldn't refuse? Yes, or no?

THE WITNESS: Yes, he did.

BY MR. CHIER:

Q. Tell us what happened in that regard.

THE COURT: What was the offer, now.

BY MR. CHIER:

Q. Yes.

A. He offered me 13 big ones, which to me would be $1300.

Q. To do what?

A. To bring that package to him. All of a sudden there became an urgency of this package. And I asked, "Why don't you come and get it?"

Q. What did he say?

A. He said he couldn't come and get it, I had to bring it to him. That he had somebody that was interested in the contents of that package.

Q. Yes.

A. And in the respect to that, I told him I would have to wait until after my son's baseball game.

Q. Did you ever ask him what was in the package?

A. I asked him what it was, but he told me I didn't need to [283] know.

Q. When did you ask him that?

A. When he gave it to me the day before.

Q. Did you have any reason to believe it contained narcotics?

A. No, I did not.

Q. Now, when the ante was up to $1300, so to speak, did you make some arrangement to accommodate Mr. Shuster?

A. Yes, I did.

Q. Tell us what happened.

A. I called him and told him that I had the package and that I would bring it to him.

Q. Did you get instructions from him as to where to go?

A. Yes. He said that they would be at the Rainbow Oaks Cafe. Then later on he got another page, they told me they wouldn't be there no more, they were going to get something to eat with the client of his that was going to be at the Sizzler. My instructions was to go to the Sizzler, but I didn't know where the Sizzler was.

Q. Did you lie to Mr. Shuster in terms of what time you said you could meet him?

A. I won't say it was a lie, no. I didn't arrive when I thought I could get there, no.

Q. Did you leave yourself enough time to get there when you said you would be there?

[284] A. No.

Q. Why was that? Did you have something else to do?

A. Yes, I was at my son's baseball game.

Q. Did you ultimately get to the area where you understood you were to meet Mr. Shuster?

A. Yes, I did.

Q. And do you know what time it was when you arrived?

A. I arrived roughly at 10:00, 10:15.

Q. And did you see Mr. Shuster at some point?

A. Yes, I did.

Q. And was he alone or with someone?

A. He was with somebody.

Q. And can you tell us what happened?

A. I was going to the phone to call him because he wasn't where he said he was going to be. So in terms of that, I walked up, they drove up.

Q. Who is "they"?

A. Gordon and Tristan.

Q. Tristan Moreland?

A. Yes, the officer that was here yesterday.

Q. What happened after that, Mr. Mezzanatto?

A. Gordon was all happy to see me. Everything was, "Oh, man, I'm glad you made it. Glad you made it. How are you doing? What took you so long?"

Q. Can I interject a question here?

[285] A. Yes, sir.

Q. In all the time you have known Mr. Shuster, had he ever seemed that elated to see you on any prior occasion?

A. No, he did not.

Q. Never?

A. No, sir.

Q. All right. Continue, please.

A. So I had the package in my car, and he asked me if I brought the stuff and I said yes.

And I says, "You want me to give it to you here?"

He said, "No, let's do it in your car."

This was Agent Moreland telling me this now, because I was just going to give him the package. This individual I never met before, I didn't know who he was. He was

Gordon's friend as far as I was concerned. Gordon told me it was his friend.

And for this to be coming down to him when the 13 big ones is—because Gordon didn't think I was—

MR. HARRIGAN: Objection. There is no question pending.

THE COURT: Sustained. It is getting narrative now.

Next question.

BY MR. CHIER:

Q. Mr. Mezzanatto, what ultimately happened with this package in the car, and what was said by whom?

[286] A. Well, Gordon was happy to see me.

Q. You don't have to go back to that, just tell us what happened.

A. What was ultimately said was that I could come into my car, "Yeah, I will come and see it in your car."

Gordon actually said, "Let's get out and check it out."

This guy, I didn't know him, I agreed to come into my car.

Q. And what happened in your car?

A. I was clearing off the seat for Mr. Moreland to sit down in.

Q. What was on the seat?

A. Like my jacket and a newspaper. Just car trash, I call that. Clutter. I was putting it in the back seat.

Q. And was there any conversation between Mr. Moreland and Mr. Shuster?

A. At that particular time of getting into the car, I don't recall, no.

Q. Tell us to the best of your recollection, Mr. Mezzanatto, exactly who said what and did what from that point forward.

A. Okay. I am sitting in the car in the driver's side, Tristan is sitting in the passenger's seat with the door

open, and Gordon is kneeling right there next to him.

I don't know this Tristan individual. Gordon and him [287] are talking, and Tristan states, "Stuff looks real good and clean."

Q. Who did he say that to?

A. I thought he was talking to Gordon, not myself. And I am smoking a cigarette. And I go to put it out in the ashtray, and I hear this clinking. I pick it up, and it was that pipe.

Q. That glass pipe?

A. Yes, the one that is right there.

Q. Is that your pipe?

A. Personal pipe, no. But I will accept responsibility for it being in my car.

Q. Well, did anybody—did Mr. Moreland appear to notice it when you picked up the pipe?

A. No.

Q. Did you do or say anything when you picked up the pipe?

A. Yeah, I looked at it and I offered Gordon and Tristan if they wanted a hit. They declined and I just put it back in the ashtray.

Q. Did your reference to the pipe that you picked out of the ashtray have any reference to the package that was transported by you?

MR. HARRIGAN: Objection. Leading, Your Honor.

THE COURT: Sustained.

[288] BY MR. CHIER:

Q. Were you—when you asked them if they wanted a hit, what were you referring to?

A. I was referring to the pipe—the glass pipe, I should say. The glass pipe.

Q. Were you referring to the package in any way?

A. No, I wasn't.

Q. Did you hear Mr. Moreland testify yesterday as to what happened at the parking lot?

A. Did I hear Mr. Moreland what?

Q. Did you hear Mr. Moreland testify about the same incident?

A. Yes, I did.

Q. And was his testimony correct or accurate?

A. It wasn't correct, no.

Q. And in what respects was it either misleading or inaccurate, sir?

A. In respect to where I was trying to get him to test the contents of that package, I was not.

Q. Did you state to anybody at that—on that night that you wanted the money to go get an additional pound of drugs?

A. Well, Tristan started talking to me like—

Q. Sir, listen, did you ever say—

A. No.

Q. —"Give me the money, and I will go get more drugs"?

[289] A. No.

MR. CHIER: I have no further questions, Your Honor.

THE COURT: Cross.

CROSS EXAMINATION

BY MR. HARRIGAN:

Q. Good morning, Mr. Mezzanatto.

A. Morning.

Q. Now, I think you testified on direct that you first met Gordon Schuster approximately six to seven months prior to your arrest, correct?

A. Yes, I did.

Q. And you said you were introduced to Gordon Shuster by a mutual friend; is that right?

A. Yes, I did.

Q. Can you tell the ladies and gentlemen of the jury who that mutual friend was?

A. You want his name?

Q. Yes.

A. Brent Vincent.

Q. And you and Gordon Shuster referred to him as "Uncle Bob;" isn't that correct?

A. Yes.

Q. And you knew Uncle Bob before you knew Gordon Shuster, right?

A. Yes.

[290] Q. How long had you known Uncle Bob?

A. Approximately a year and a half.

Q. And at the time of the arrest, where did Uncle Bob live, do you know?

A. He was a floater. I didn't have a permanent address for him, no.

Q. He just kind of lived from hotel to hotel, correct?

A. I wouldn't say that. I don't know.

Q. You stated you were friends, didn't have a permanent address?

A. I would say that is more correct.

Q. He didn't have any gainful means of employment; isn't that right? Let's say legitimate means of employment; isn't that right?

A. No. He was a glazer.

Q. Isn't it a fact that you knew Uncle Bob, known him for a long time. He was involved in trafficking methamphetamine, Mr. Mezanatto, that is correct, isn't it?

A. No.

Q. Well, now, you recall about a month ago you met with myself, you met with Agent McKee here, you met with Agent Moreland, correct?

A. Yes.

Q. On October 17th, I think was the date, which was a Thursday, right?

[291] A. I think so, yes.

Q. Remember that date?

A. Yes.

Q. Remember it was in the U.S. Attorney's office, which is in the building next here, correct?

A. Yes.

Q. And you came to my office, and you came with your attorney, your then attorney, Merle Schneidewind, right?

A. Yes.

Q. At that time isn't it a fact, sir, that you admitted to me, to your attorney, Agent Moreland, you knew Uncle Bob and Uncle Bob was dealing in methamphetamine?

MR. CHIER: May we approach sidebar, please?

THE COURT: Yes.

(Whereupon, the following proceedings were had at the bench, outside the hearing of the jury:)

MR. HARRIGAN: I think I explained this to you yesterday, he admitted to Agent McKee, to me, he knew he was delivering a pound of methamphetamine that he got from Uncle Bob. Impeachment.

THE COURT: He will deny it?

MR. CHIER: Is counsel going to be a witness?

MR. HARRIGAN: I have other witnesses.

THE COURT: He has other people he can call as a witness, if he denies it.

[292] MR. CHIER: Well—

THE COURT: Out of court declaration.

With reference to leading questions, question, did you have a report or paper work from the investment? That is not leading. The witness can recall of his own recollection. If he asked, you did have or didn't have any paperwork,

then that would be leading. That is suggesting an answer.

MR. HARRIGAN: There was a lot of leading.

THE COURT: That is admissible. Put the witness on rebuttal. I do allow leading, I think it is proper to lead in both areas.

(Whereupon, the following proceedings were had in open court, in the hearing of the jury:)

BY MR. HARRIGAN:

Q. Let me ask you, do you have the question in your mind?

A. Could you repeat it, please?

Q. Isn't it a fact you met with us, you admitted you had known Uncle Bob for a long time?

A. Yes.

Q. We talked about Uncle Bob; isn't that correct? At that meeting?

A. Yes, we did.

Q. And you admitted that Uncle Bob was a friend of yours; isn't that correct?

A. Yes.

[293] Q. And you admitted that you met Gordon Shuster through Uncle Bob; isn't that a fact?

A. Yes.

Q. And that in fact you knew both Uncle Bob and Gordon Shuster were involved in trafficking methamphetamine.

A. At that time, yes, I did.

Q. You admitted that to us?

A. Yes.

Q. And you admitted to us, isn't it true, that you picked up that package of methamphetamine from Uncle Bob that day, on August 1st; isn't that correct? That is what you told Agent McKee, myself, your own attorney; isn't that right?

A. I stated that, yes. And I also stated a few other things.

Q. You did state that. You picked up this package. You didn't tell us that somehow Gordon Shuster provided you with this package the day before, did you? You didn't tell us that at this meeting, correct?

A. No, I didn't.

Q. In fact, you told us that you knew that package contained methamphetamine, didn't you?

A. I told you I found out that package contained methamphetamine, yes.

Q. The question is, you told us you knew at the time that that package contained methamphetamine, didn't you?

[294] A. At what time are we referring to?

Q. At the time you delivered the package.

A. No.

Q. In fact, you said that the methamphetamine was actually Gordon Shuster's and Uncle Bob was holding it, and you just picked up that methamphetamine for Gordon Shuster; isn't that correct?

A. Yes.

Q. In fact, when we asked you about whether you had dealt methamphetamine before you indicated that this is the first time you had ever delivered this large a quantity of methamphetamine; isn't that in fact true?

A. Yes.

Q. You admitted to us that you had dealt in methamphetamine before, didn't you? That you had bought ounce quantities?

A. No.

THE COURT: I am sorry, you spoke so rapidly on that last question.

BY MR. HARRIGAN:

Q. You admitted you bought and sold –

MR. CHIER: I am going to object to the use of the word "admitted." It calls for a conclusion.

THE COURT: That is one he can testify to.

MR. CHIER: Your Honor, it is not the conclusion that is important, it is the words that are used that will [295] determine whether or not –

MR. HARRIGAN: I'll rephrase the question.

THE COURT: It is up to you. If you want me to rule, I will rule; if you want to rephrase, rephrase.

BY MR. HARRIGAN:

Q. Isn't it a fact you told us that you dealt in ounce quantities of methamphetamine on prior occasions? Mr. Mezzanatto, isn't that a fact?

A. I told you that at the debriefing?

Q. At the meeting, yes.

A. No. I told you the largest amount I have ever known to be in transactions were ounces. I didn't tell you I dealt in them, no.

Q. So you never admitted to us you had dealt in methamphetamine before?

THE COURT: You are saying "admitted" again.

BY MR. HARRIGAN:

Q. You never told us that you had dealt in methamphetamine before?

MR. CHIER: It has been asked and answered.

THE COURT: Overruled.

THE WITNESS: Can you repeat the question?

BY MR. HARRIGAN:

Q. Your testimony is today, then, you have never dealt in methamphetamine before; is that right?

[296] A. Correct.

Q. And you never told us that fact, that you dealt in methamphetamine, at – let me rephrase that.

Did you tell us at the meeting that you had dealt in methamphetamine on previous occasions?

A. Prior to August 1st?

Q. Yes.

A. No, I didn't.

Q. Well, prior to August 1st you knew what methamphetamine was, didn't you?

A. I know what methamphetamine is, yes.

Q. You knew what it looked like, didn't you?

A. I could say yes, since it is—yeah, I would say yes.

Q. You did—

A. I have seen methamphetamine, if that is what you are asking.

Q. That is what I am asking. You have seen methamphetamine, you knew what it looked like on August 1st?

A. Yes.

Q. In fact, you had smoked methamphetamine yourself; isn't that correct?

A. I have smoked methamphetamine, yes.

Q. In fact, now, that pipe that was seized from your car, Government's Exhibit 3, that was your pipe, wasn't it?

A. My personal pipe, no.

[297] Q. Whose pipe was that?

A. I don't know.

Q. The first time you saw that in your car was when you heard this clink; is that correct?

A. Yes.

Q. Now, I think you testified on direct that you had developed a business relationship with Gordon Shuster in this six or seven months; is that correct?

A. Business—I was working for Gordon, yes.

Q. You were working. What type of work were you doing for him out there on the property in Fallbrook, California?

A. I was doing a number of things. I was more or less employed to be an electrician, but there was no electrical work to do so I started doing handyman jobs. A lot of time I didn't do anything, we just visited.

Q. What jobs did you do that required your special expertise of being an electrician?

A. I didn't do any.

Q. So he hired you at $100 a day just to do handyman work, not because you were a licensed electrician; is that right?

A. Yeah, but I didn't work every day.

Q. I am not saying you worked every day, but you said when he paid you he paid you $100 a day.

MR. CHIER: Object to the form of the question. He is asking the witness to speculate as to the reason for [298] somebody else doing something. The question was, "So he hired you to do handyman work, even though you were an electrician?"

THE COURT: The witness is here, he can say what he was hired for. Overruled.

MR. CHIER: He can't speak for that hirer, your Honor.

THE COURT: Yes, what his understanding is. He can speak to that. Overruled.

BY MR. HARRIGAN:

Q. Let's go back. You knew what work you were doing out there, didn't you?

A. The physical work, yes.

Q. Physical work. And that physical work didn't require any special expertise as an electrician, correct?

A. No.

Q. In fact, it is fair to say the work you did was a handyman, right?

A. Yes.

Q. Work that required really no special training or skill, correct?

A. Correct.

Q. And for that work Gordon Shuster was willing to pay you, Gary Mezzanatto, $100 a day?

A. Yes, he was, up to $300 a week.

[299] Q. Up to $300 a week. He was willing to pay you – how long did you work in a given day?

A. Sometimes I worked all night.

Q. And sometimes you worked less than that?

A. Sometimes I only worked a couple of hours.

Q. Every time you came down he gave you $100 to come down and work; is that correct?

A. Not physically gave me $100 every time, no.

Q. When you worked a couple of hours, how much did he pay you?

A. It would be like he would run a tab, whatever. I would get $300 a week.

Q. You weren't close to Mr. Shuster's property, were you?

A. No.

Q. And we are talking about an hour-and-a-half- to two-hour drive, aren't we?

A. Yes.

Q. So you would drive down, what would take a four-hour round trip, to do a couple of hours work at Mr. Shuster's residence; is that correct?

A. Yes.

Q. That is the type of business relationship you had developed; is that right?

A. Yes.

Q. There really was no electrical work to be done at Mr. [300] Shuster's property, was there?

A. I never did electrical work at his place, but yes there was electrical work.

Q. It ran on a generator; isn't that correct? The property out there ran on a generator?

A. The property, yes, it did.

Q. Which was fueled by diesel?

A. Yes.

Q. And let me ask you this, you testified also that when you met Gordon Shuster he essentially told you that he was a special agent for the CIA and he made plastic explosives.

MR. CHIER: Misstates the witness. He didn't say that he was told that when he met Mr. Shuster.

MR. HARRIGAN: That is fine.

BY MR. HARRIGAN:

Q. At some point when you met him, did he tell you that?

A. Gordon told me that, yes.

Q. "I work for the CIA"?

A. When I questioned his abilities to –

Q. Answer the question, please. It is a yes-or-no question.

A. Yes.

Q. At some point he told you, "I work for the CIA," right?

A. Yes.

Q. And that he made plastic explosives?

[301] A. Him and the owner made plastic explosives.

Q. Him and the owner made plastic explosives. And you believed him, right?

A. Yes, I did.

Q. And the reason you believed him was because there were all of these chemicals out at this property?

A. There were containers with chemicals in them that he said were chemicals for making plastic explosives, yes.

Q. And because you saw the chemical containers, you also believed he worked for the CIA, right?

A. Yes.

Q. Let's get a picture of this rural property. We are not talking about the Taj Mahal, are we, where Mr. Shuster lives right?

A. By no means.

Q. He lives in what is like a double-wide mobile trailer, right, on property?

A. Yes.

Q. There is no electricity out there, correct? I mean, in terms of electricity from public utilities, correct?

A. No.

Q. The access back to that road is a dirt road?

A. Yes.

Q. It is not maintained by the county, is it?

A. No. They had their own tractor, they maintained it [302] themselves.

Q. And most of these chemicals and equipment that you saw, you were able to see those because those were all around the property; isn't that correct?

A. Yes.

Q. There would be some by his trailer, some off near a shed, correct?

A. Exactly.

Q. A few trailers out there that he would keep locked, right? That he had chemicals in them; isn't that right?

A. I don't know about inside the trailer, no.

Q. I am talking about other trailers, not his house trailer.

A. You say "the shed," I mean reference to the garage. There was a lot of containers up there, yes.

Q. And based solely on the fact that he had the chemicals you believed that, one, he was making explosives; and, two, he worked for the CIA; is that right?

A. Yes.

Q. Now, Gordon Shuster himself never had a pager; isn't that correct?

A. Gordon had a pager.

Q. In his house he had a phone though, correct?

A. Yes, he had a phone.

Q. And you would contact him, generally, by calling his [303] home phone; isn't that right?

A. Correct.

Q. Now, you said after you met him he directed you to obtain a pager; is that right?

A. To a what?

Q. To obtain a paging device.

A. To purchase a pager?

Q. Yes, Gordon told you, "Why don't you get a pager?"

A. Correct.

Q. And the reason you did so was so you wouldn't lose these jobs that Gordon had available for you, correct?

A. Correct.

Q. So he could contact you at any time of the night to come down and do these handyman jobs, correct?

A. No, I never went down there like at night to do handyman jobs.

Q. You never went down there at night, generally he would call you the day before, correct?

A. Yes, he would call me that day.

Q. Or that day. Now, you had an answering machine, though, right, prior to getting a pager?

A. Correct.

Q. And Gordon Shuster was able to contact you on the answering machine and get ahold of you, wasn't he?

A. Yes.

[304] Q. And you weren't aware of any other people that Gordon Shuster was using to do handyman work out on the property, were you?

A. I am sorry?

Q. You weren't aware there were any other individuals that Gordon Shuster was using to do handyman work at the property?

A. Other people?

Q. Yes.

A. At times, yes, there were other people out there.

Q. Now, when he directed you to get the pager, do you remember when you got that pager, what day?

A. The exact date, no.

THE COURT: I'll tell you what, I will give you a couple of hours to think about that.

We are going to take a noon recess right now. I have a meeting with the other judges, so I will be back at 1:45. You can think about the date you got the pager.

Let's take a recess, folks. Enjoy your recess. We will see you at 15 minutes to 2:00. Have a nice lunch hour.

(Lunch recess.)

[305]

* * *

THE COURT: Counsel, want to continue.

MR. HARRIGAN: Thank you.

THE COURT: All parties are present. I hope you folks had a nice lunch.

BY MR. HARRIGAN:

Q. Mr. Mezzanatto, I think where we last left off I was asking you about a telephonic pager that you obtained, remember that?

A. Yes.

Q. In fact, you obtained a pager sometime in April 1991; isn't that correct?

A. Yes.

Q. And you first obtained that pager in your name, Gary Mezzanatto?

A. Yes, I did.

Q. And you used your address, 1226 Bellview Street in San Bernardino?

A. Yes, I did.

Q. And do you recall how much it cost you to obtain that pager?

A. It was a couple hundred dollars, yes.

Q. You spent $200 to obtain that pager, right?

A. That was the cost of it, yes.

[306] Q. And real shortly after you obtained that pager, you then sent a letter to the pager company sometime around the middle of May telling them that you had sold the pager to a John Martinez, correct?

A. Yes.

Q. And that was a lie, wasn't it?

A. Yes, it was.

Q. And, in fact, you put as the address 5702 Ironwood in San Bernardino, California as the address for John Martinez; isn't that right?

A. Yes, it is.

Q. And John Martinex didn't live at that address; isn't that right?

A. Yes, it is.

Q. You were John Martinez, correct?

A. I was – yes.

Q. You were using a false name, right?

A. Yes.

Q. And you asked the company to make changes, note the billing and change of address, right?

A. Yes.

Q. Now, at the time that you were arrested, that same pager was seized from you; isn't that right?

A. Yes, it was.

Q. Now, I think on direct testimony you said the reason you [307] did all of this was because Gordon Shuster told you to; is that right?

A. Yes, it was.

Q. Because he told you it could be traced back to you?

A. Yes, he did.

Q. And you didn't want that to happen; isn't that right?

A. No, Gordon didn't want it to happen.

Q. Isn't it a fact you didn't want it to happen?

MR. CHIER: Argumentative. Asked and answered, your Honor.

THE COURT: Overruled.

BY MR. HARRIGAN:

Q. You were involved in dealing Methamphetamine and you didn't want that pager number to come back to you, Gary Mezzanatto; isn't that a fact?

A. No, it is not.

Q. Well, you were doing this for Gordon Shuster, right? That is what you claim?

A. Pardon me?

Q. You changed the name and the billing on this pager because Gordon Shuster told you to, right?

MR. CHIER: Asked and answered, your Honor.

THE COURT: Overruled. Foundational.

BY MR. HARRIGAN:

Q. Right?

[308] A. Yes.

Q. And you did that because you had a business relationship with Gordon Shuster, right?

A. I did work for Gordon, yes.

Q. And through Gordon you were paid money; isn't that right?

A. Yes.

Q. So you lied to the pager company for financial reasons, right?

MR. CHIER: Argumentative, your Honor.

THE COURT: Overruled—I change my ruling. Sustained.

BY MR. HARRIGAN:

Q. You changed the address and the name on the pager because of financial reasons, correct?

A. No.

MR. CHIER: Objection.

BY MR. HARRIGAN:

Q. You didn't do that for money?

A. No.

Q. You did that simply because Gordon Shuster told you to?

MR. CHIER: Asked and answered again, your Honor.

THE COURT: Overruled.

THE WITNESS: Yes.

[309] BY MR. HARRIGAN:

Q. You weren't concerned with the pager coming back to you, is that what you are saying?

A. Correct.

Q. Because you didn't think anything illegal was going on; is that right?

A. Correct.

Q. Well, isn't it a fact after you were arrested, sir, after you were arrested, after the jig is up, Gordon has been arrested, right?

A. Yes.

Q. You wrote a letter to the pager company, correct?

A. No.

Q. Let me show you what I marked as Government's Exhibit 6 for identification.

(Plaintiff's Exhibit 6 marked for identification.)

MR. HARRIGAN: I have shown defense counsel what I marked as Government's Exhibit 6—I think that is next in order—for identification. Let me identify it for the record. It is simply five pages from a nationwide paging company that include billings, invoices, letters, change of address.

BY MR. HARRIGAN:

Q. Take your time. What I want you to look at, though, as you review all of the documents, look at the last page of [310] that document. Mr. Mezzanatto, do you recognize that letter?

A. No.

Q. Isn't it a fact, sir, that you, or you caused somebody else to write a letter to the pager company after you were arrested saying, "Please cancel my pager, 714-298-6236, as of August 12th, 1991, due to theft. Thank you, Johnny Martinez."

MR. CHIER: Objection. Question is compound and asked and answered.

THE COURT: No, that is a document, he is just asking what it says. Overruled.

MR. CHIER: He said, "you or you caused somebody." That is a compound question.

THE COURT: There is no problem with that question.

THE WITNESS: In answer to your question, you said that I wrote the letter. No, I did not.

BY MR. HARRIGAN:

Q. Did you cause someone else to write that letter?

A. I asked the change be—the service to be canceled on the pager.

Q. Who did you ask to do this?

A. I asked the person that I puchased it from. I didn't ask them verbally, I had somebody else to ask to cancel that, which would be my wife, to call the person to cancel it.

I did not write that letter, she did not write that [311] letter.

Q. Do you have any idea who would send a letter to the pager company which says, "please cancel my pager," same number, "as of August 12th due to theft. Johnny Martinez"?

A. Because that was the name that the pager had been put into. It was previously sold. I fully admit I put the—

Q. Sir, take a look at that exhibit again. That is a signature, correct? That is John Martinez.

A. That is not my signature of John Martinez.

Q. You do not know who—

A. I do not know who wrote that.

THE COURT: Wait until he finishes the question, now.

BY MR. HARRIGAN:

Q. You had no idea who would have sent this letter to the pager company?

A. Personally, no. I did not know who did it.

Q. All you asked your wife to do was just to call the pager company and tell them to cancel it?

A. Yes.

Q. You never told you wife to call them up and say it has been stolen?

A. I didn't—

MR. CHIER: Your Honor, I am going to object to that. Husband-and-wife privilege. He doesn't have to answer [312] that.

THE COURT: Overruled. The question was what he told his wife to do.

MR. CHIER: That is a communication, and that is privileged.

THE COURT: Did he tell his wife to. Overruled.

BY MR. HARRIGAN:

Q. Did you tell you wife that?

A. I told her to get ahold of the company and cancel it.

Q. Did you tell her to tell the company, the question is, that it had been stolen?

Q. No.

A. You are not responsible for this misrepresentation?

A. No.

MR. CHIER: Argumentative. Move to strike.

THE COURT: Overruled.

BY MR. HARRIGAN:

Q. Now, Mr. Chier asked you on direct how you obtained this package here which has been entered into evidence as Government Exhibit 2. Do you recall that?

A. Yes.

Q. I think you testified in court today that when you received that, this package was stapled up and taped?

A. Yes.

Q. And you had no idea what the contents of that package [313] were?

A. No, I did not.

Q. But you believed the package might contain explosives or some type of plastic explosives?

A. Yes, I did. That was my assumption, I was never told that.

Q. That is fine. That was your assumption. No one ever told you that?

A. No.

Q. Gordon Shuster never told you that?

A. No.

Q. He didn't tell you?

A. No.

Q. But you agreed to take this package from him, not knowing what was inside, correct?

A. Yes.

Q. And, according to you, did you testify today that he told you to write an address on it; is that right?

A. Yes, he asked me to address the package.

Q. He didn't tell you whose address to put on it, correct?

A. No, he didn't.

Q. You could have put President Bush's address on there?

A. Yes, I could have.

Q. But you chose, sir, to put as a mailing address—would you like to look at it?

[314] A. I have seen it.

Q. You have seen the package before. You chose to put as a mailing address, "The M & M Family, 12158 South La Cadena Drive, Colton, California."

That was your wife's address at the time, correct?

A. Correct.

Q. It wasn't Gordon Shuster's address?

A. No.

Q. It wasn't Uncle Bob's address?

A. No.

Q. And who is the M & M family? That is not related to the candy, is it?

A. No, Mezzanatto-Mezzanatto family is what I would relate it to.

Q. As a return address you have, "From M & A & Z family, Ironwood, San Bernardino 92404."

What is the M & A & Z family?

A. I don't recollect that to mean anybody.

Q. You never intended to mail this package, did you?

A. No, not directly to anybody, no.

Q. The question is, did you ever intend to mail this package, directly or indirectly, to anybody?

A. No.

Q. But you put stamps on it; is that right? You have some stamps here. Would you like to see the package? Those are [315] four stamps, correct?

A. Correct.

Q. 29 cent stamps?

A. Yes.

Q. Postage has gone up? Did you weigh out this package before you put the stamps on it?

A. No.

Q. You didn't intend to mail it?

A. No, not like that.

Q. Not like that, but did you intend to mail it at all?

A. No.

Q. I assume if this contained explosives, this was going to be delivered to your wife's address; is that right? If it got lost?

MR. CHIER: Your Honor, it is argumentative. He said he didn't intend to mail it.

THE COURT: The last question was argumentative. The area is probative.

BY MR. HARRIGAN:

Q. By doing your action, did you realize that if somehow this package got misplaced it might be sent to your wife's address?

A. Yes.

Q. Now, you testified now that Gordon Shuster caused you to do this, correct?

[316] A. Yes.

Q. But isn't it true, Mr. Mezzanatto, the reason you did this is the reason that you put your pager in another name, it was to conceal what you were doing?

MR. CHIER: Asked and answered, your Honor.

THE COURT: Overruled.

THE WITNESS: No, it wasn't.

BY MR. HARRIGAN:

Q. Because, isn't it a fact, if you are somehow stopped on the way down to Fallbrook, police said, "What is that package." You could say, "It is simply mail." Isn't that right?

A. I never intended to get stopped by the police on the way to Fallbrook, no.

Q. Now, you assumed this was explosives, correct? Contained in this package?

A. Not explosives, an ingredient for.

Q. But you weren't – you didn't know for sure?

A. I had no idea, you are correct.

Q. And you testified on direct that you are not familiar with plastic explosives or explosives; is that right?

A. Correct.

Q. But you are aware that explosives can be flammable, right?

A. Yes.

[317] Q. And that if you get a flame around explosives, you might have an accident; isn't that right?

A. Possibly.

Q. Despite that fact, you offered to have Agent Moreland take a hit from this glass pipe that you found in your car, right?

A. Yes, I offered him.

Q. And right below him, fair to say about a foot below him, or in his lap at that time, is this package that may contain explosives, right?

A. I didn't know what that package contained.

Q. That is right, you didn't know what it contained. But you thought it contained explosives, right?

A. Not as a overbearing assumption of what was in there, no. I had no idea.

Q. Well, you testified on direct that you thought that Gordon Shuster, you believed he was making plastic explosives at his ranch, correct?

A. Yes, that is what he told me.

Q. Now, in addition to offering that pipe, you are also a smoker, aren't you?

A. A cigarette smoker, yes.

Q. On that hour and a half drive down to Fallbrook from San Bernardino, you had some cigarettes in your car, didn't you?

A. Yes, I did.

[318] Q. And you, in fact, smoked quite a few cigarettes; isn't that right? On the way down there.

A. I don't remember the number.

Q. Isn't it a fact when the agents searched your car your ashtray was full of cigarette butts; isn't that right?

A. That—I don't remember that either.

Q. But you do recall having cigarettes and smoking cigarettes in your car, don't you?

A. Yes.

Q. Now, you said that Gordon Shuster offered you 13 big ones to take this package back down to Fallbrook, right?

A. Yes, he—

Q. That is just a yes-or-no question. Did he offer you $1300?

A. He said 13 big ones, to me that meant 1300, yes.

Q. That is fine. And let me ask you this, how many times have you, on previous occasions, delivered packages for Gordon Shuster for $1300?

A. Never.

Q. To you that was a lot of money, correct?

A. Yes, it was.

Q. The most Gordon Shuster paid you before is $100 a day; is that right?

A. Yes.

Q. Now, let's go back to the meeting, October 17th, that I [319] touched on briefly before. Do you recall that meeting with Agent McKee, myself, Agent Moreland, and your attorney, Merle Schneidewind, right?

A. Yes.

Q. And isn't it a fact you came to talk to us because you wanted to cooperate with the government and provide information about other traffickers?

MR. CHIER: Objection. May we approach sidebar, your Honor?

THE COURT: No. We don't need a sidebar for that. Let's have the question over again, please.

MR. CHIER: Discussions as part of a case settlement are by policy excluded from evidence, your Honor.

THE COURT: You weren't involved in that. Was he involved?

MR. HARRIGAN: No, he was not involved.

THE COURT: You weren't involved in that. Overruled. Let's hear the question again. Overruled.

BY MR. HARRIGAN:

Q. Isn't it a fact you talked to us because you told us you could help the government out by providing information about people dealing in drugs, right?

THE COURT: Objection, counsel?

MR. CHIER: Yes. May I approach sidebar, your Honor.

[320] THE COURT: No. Your objection is relevancy? Improper cross?

MR. CHIER: Yes. Relevance, your Honor.
THE COURT: Overruled. You may answer.
THE WITNESS: Repeat the question, please.
THE COURT: Ms. Reporter, please read the question back.
(Record read.)
MR. CHIER: Your Honor, I would cite the court to rule 408.
THE COURT: You keep thinking, don't pay attention to what we are doing.
Overruled.
You may answer.
THE WITNESS: Could I hear the question again?
THE COURT: Yes.
MR. CHIER: I am also going to object on Kastigar grounds, your Honor.
THE COURT: Overruled.
Ms. Reporter.
Everybody stop now so the reporter can read the question.
(Record read.)
THE WITNESS: No. That is not the reason why I talked to them.

[321] BY MR. HARRIGAN:
Q. Isn't it a fact, sir, that at that meeting you told the agents and myself that when you delivered that package you were acting as a courier?
A. I was delivering a package that belonged to somebody else.
Q. It is a yes-or-no question.
MR. CHIER: No, it is not, your Honor. The witness is entitled to explain his answer.
THE COURT: We have to have a yes-or-no answer first. Counsel who is cross-examining has the right to have him answer the question.

Let's start all over again.
MR. HARRIGAN: I will ask it again, your Honor.

BY MR. HARRIGAN:
Q. Isn't it a fact you told the agents and myself at that meeting that when you delivered that package—
THE COURT: Referring to what?

BY MR. HARRIGAN:
Q. Government's Exhibit 2, the envelope that Gordon Shuster had provided you, that you were acting as a courier?
THE COURT: Just a moment. Do you have an objection?
MR. CHIER: Yes, your Honor.
THE COURT: State it, please, for the record.
[322] MR. CHIER: Rule 408. Kastigar.
THE COURT: Overruled.
You may answer.
THE WITNESS: At that meeting, no, I did not.

BY MR. HARRIGAN:
Q. Isn't it a fact that you said you knew it was methamphetamine and you were simply acting as a courier of drugs?
A. No, I did not.
Q. Isn't it a fact that at that meeting you never told me, Agent McKee, Agent Moreland, anything about the CIA or any plastic explosives being manufactured in Fallbrook by Gordon Shuster?
A. I wasn't given the chance.
THE COURT: The answer is no?
THE WITNESS: No.

BY MR. HARRIGAN:
Q. Well, you recall when that meeting started out, don't you, Mr. Mezzanatto, I specifically told you that if

you are going to talk with us you should be truthful, correct?

MR. CHIER: Your Honor, counsel is placing him in a position to be a material witness in the case.

THE COURT: He is entitled to inquire about that conversation. Objection overruled.

THE WITNESS: Could I have the question again, [323] please?

BY MR. HARRIGAN:

Q. At that time in the meeting one of the first things I went over with you was the guidelines of the meeting, correct?

A. Which were?

THE COURT: Talking about the guidelines, we are not getting into what they were.

BY MR. HARRIGAN:

Q. Prior to the meeting, what the parameters were going to be for the meeting; is that correct?

A. Yes, you mentioned something to the effect.

Q. Something to the effect. And I mentioned, correct, in the front of the agents, that you should be 100 percent truthful in talking to myself and the agents; isn't that right?

MR. CHIER: Your Honor, this is entirely improper. Counsel vouching for his own anticipated testimony here.

THE COURT: No, not his anticipated testimony, he is going to have other people testify to that. He can't do it. He has to have other people at the meeting. The objection is overruled.

MR. CHIER: I intend to call Mr. Harrigan as a witness.

THE COURT: You can't call him as a witness. There [324] are other people you can call for him.

Next question.

THE WITNESS: Can you reask the question again, please?

BY MR. HARRIGAN:

Q. Yes. Isn't one of the things I told you in the presence of the agents was if you are going to talk to us you should be truthful?

A. Yes.

Q. You told us you were going to be truthful; isn't that right?

A. Yes.

Q. And you told us you were going to provide us with all information; isn't that right?

A. I would provide you with what?

Q. You agreed to provide us with all information that you had?

A. I would tell you what I knew, yes.

Q. And on more than—you said you weren't given the opportunity to tell the story about the CIA; is that right?

A. No. My questioning arisen from the first question and answer—

Q. Well, no, Mr. Mezzanatto, you will have a chance to explain your answer.

The question is, though, you testified here in court [325] that the government didn't give you the opportunity to tell about this story about the CIA?

MR. CHIER: The record speaks for itself, your Honor.

THE COURT: Overruled.

THE WITNESS: I was not given the opportunity, no.

BY MR. HARRIGAN:

Q. Isn't it a fact that during numerous times in that interview we gave you an opportunity to explain some of your answers, consult in private with your counsel?

MR. CHIER: Calls for a conclusion of the witness.

THE COURT: Overruled.

THE WITNESS: Repeat the question, please.

BY MR. HARRIGAN:

Q. During numerous times during that meeting we stopped the interview and told you to consult with your counsel and think about the answers you were going to give.

A. One time you told me to consult with my counsel, yes.

Q. We did that on more than one occasion, didn't we?

A. No.

Q. And that meeting lasted more than a short period of time; isn't that right?

A. No, that meeting was a very short period of time.

Q. That meeting lasted, isn't that true, at least 40 minutes; isn't that right?

[326] A. I do not know the exact length of the meeting. It was short to me. I spent more time in the hallway—

Q. There is no question pending.

MR. CHIER: He is explaining his answer, your Honor.

THE COURT: He can't explain it. That is what you are here for. The person asking the question is entitled to have that question answered.

BY MR. HARRIGAN:

Q. You didn't mention about the CIA, and you also at no time mentioned anything about plastic explosives; is that correct?

A. At that meeting, no.

Q. In fact, the first time that you told the government about the CIA plastic explosives is right here in court today; isn't that a fact?

A. This is the first chance I had to express that, yes.

Q. The question is, this is the first time you have related that story; isn't that true?

A. Yes.

Q. Isn't it a fact, Mr. Mezzanatto, that you knew all along that—at least knew prior to August 1st—that Gordon Shuster was manufacturing methamphetamine in Fallbrook, California?

A. No, I did not.

Q. Isn't it a fact that at that meeting with Agent McKee [327] and Agent Moreland that you admitted that you knew he was manufacturing methamphetamine?

A. After the arrest I found that out, yes.

Q. That is not the question. Didn't you admit that you knew prior to your arrest?

A. No, I did not admit that.

Q. Isn't the truth that you knew about the methamphetamine lab, and in fact you yourself helped Gordon Shuster obtain chemicals and supplies for that methamphetamine lab?

A. No, I did not.

Q. You never helped—isn't it a fact that you did help Gordon Shuster obtain equipment for that methamphetamine lab?

A. Your definition of equipment is going to be different than mine.

Q. That is fine. Let me ask you—let me show you what I have marked as Government's Exhibit 7 for identification.

(Plaintiff's Exhibit 7 marked for identification.)

MR. CHIER: Your Honor, can we see you at sidebar?

THE COURT: Okay.

(Whereupon, the following proceedings were had at the bench, outside the hearing of the jury:)

MR. CHIER: Counsel proposes to use a document not available to me prior to trial.

THE COURT: What is it?

MR. CHIER: Rule 16. It is a receipt of some kind.

[328] MR. HARRIGAN: I will tell you where it came from, Gordon Shuster. He is not entitled under Rule 16. It is a receipt from Grainger for a vacuum pump. A vacuum pump is used in the manufacture of methamphetamine. This is his address, he signed this.

THE COURT: This is cross-examination.

MR. HARRIGAN: Not introduced into evidence.

MR. CHIER: Here the point is—

THE COURT: He didn't offer it in the case in chief, he is entitled to use it now.

MR. HARRIGAN: It wasn't seized from your client.

MR. CHIER: I don't know where it was seized from.

MR. HARRIGAN: I represent, as an officer of the court, the agents got it from Gordon Shuster.

THE COURT: He is going to ask him. He is entitled to use it for that purpose.

MR. CHIER: He is required under Rule 16 to make that available.

THE COURT: No, didn't use it in his case in chief. Impeachment.

MR. CHIER: Any document.

THE COURT: No.

MR. CHIER: This is not a document that originated with Mr. Mezzanatto.

THE COURT: He is going to ask him.

[329] MR. HARRIGAN: It has a signature.

THE COURT: He is going to ask him. There is no problem with that.

MR. CHIER: No admission as to anything incriminating. If there is it tends to establish an element of the offense, it should have been made available.

THE COURT: Offered as impeachment.

MR. CHIER: As to what?

MR. HARRIGAN: He helped to make a lab out there. He says he doesn't know anything about it. That is why the government is entitled to ask. He may have an explanation.

THE COURT: He is taking a chance putting it in.

MR. CHIER: Fine.

(Whereupon, the following proceedings were had in open court, in the hearing of the jury:)

BY MR. HARRIGAN:

Q. Let me show you what I have marked as Government's Exhibit 7 for identification, and ask you to take a look at that.

A. (Witness complies.)

Q. Tell me when you are done taking a look at that.

THE COURT: The question is, do you know what it is? Just yes or no.

THE WITNESS: Yes, I know it is an invoice.

[330] BY MR. HARRIGAN:

Q. It is an invoice; is that right?

A. Yes, it is.

Q. And it is an invoice from Grainger, which is a company that, I take, makes electronic parts?

A. It is a supplier, warehouse supplier.

Q. This has your signature on it, correct? Gary Mezzanatto.

A. Yes, it does.

Q. And this is an invoice or purchase order dated June 18th of this year, right?

A. Yes, it is.

Q. In which you purchased a vacuum pump from Grainger—or from Bennetts Electrical; is that right?

A. I purchased it under that name, yes. I worked for that individual. Grainger is a wholesaler, the public can't buy from them.

Q. That is right. Bennetts Electrical Company is a retailer?

A. Correct.

Q. And you bought that pump from Bennetts Electrical, correct?

A. No, I bought it from Grainger.

Q. This is a vacuum pump that you purchased, correct? Do you want to take a look at it?

[331] A. I don't see what the purchase order is. No, it is a 1/10—1/10 horsepower piston compressor.

Q. That is a vacuum pump?

A. No, that is a compressor that pumps air.

Q. Would you accept if Grainger had told me—

MR. CHIER: Your Honor, I would object to validating hearsay, would he accept it. It is argumentative.

THE COURT: He can ask him about the receipt.

MR. CHIER: The witness is now being asked to validate the hearsay statement of some vendor, your Honor. That is completely outside the rules of evidence.

THE COURT: No, it is not. Overruled.

You may ask him.

BY MR. HARRIGAN:

Q. If you were told by Grainger that item No. 5Z349 was a vacuum pump, that would be incorrect; is that right?

A. That would—

MR. CHIER: Object on the grounds he is asking the witness to speculate.

THE COURT: Everybody stop. When he trying to object, he is trying to protect your interest, so be quiet for a moment.

Let me hear your objection.

MR. CHIER: The objection is that any question that begins with "if you were told" requires the witness to [332] speculate.

THE COURT: That is not necessarily so.

MR. CHIER: Calls for speculation.

THE COURT: He can answer. Overruled.

BY MR. HARRIGAN:

Q. Let me ask you this, you don't know what item 5Z349 is, do you?

A. I know it as what that paper says it to be, yes.

THE COURT: Either you do or you don't. See how easy it is? "I don't know" or "Yes, I do."

THE WITNESS: Specifically, no.

BY MR. HARRIGAN:

Q. What is a 1/10 piston compressor?

A. You want me to describe what a 1/10 is to me?

Q. Yes.

A. Do you want me to say what Grainger says it is?

Q. What is it to you?

A. 1/10 horsepower compressor. In other words, the horsepower is what generates the speed of your compression.

Q. Isn't it true with a compressor you can use it both to blow air and suck air, right? To act as a vacuum, right?

A. A compressor is to blow air, yes.

Q. And you can create a vacuum by blowing air, isn't that right?

A. I wouldn't know that to be a true fact, no.

[333] Q. You do know, Mr. Mezzanatto—isn't it a fact that you know that this item—you pruchased this specifically for Gordon Shuster to utilize to manufacture methamphetamine; isn't that a fact.

A. That is not a fact.

Q. You never provided Gordon Shuster with this 1/10 piston compressor?

A. I bought that for Gordon Shuster, yes, I did.

Q. Oh, you bought it for Gordon Shuster?

A. But not to manufacture methamphetamine, no.

Q. How did that fit into you handyman work at Fallbrook?

A. That exactly is work I—I live next to a Grainger. In a neighboring Riverside City, there is a Grainger. You noticed that says it is in Pomona.

Q. I understand that. My question is this—

A. I went to Riverside because Gordon asked me if I knew where a Grainger was. I said, "yeah, there was one by my house."

Q. That is fine. But my question to you is you testified you were something of a handyman for Gordon Shuster. Did one of your duties as a handyman entail buying compressors for him?

A. I ran errands for Gordon, yes, I did.

Q. Were you paid cash, $130, for a compessor?

A. Yes, Gordon gave me the money for that.

[334] Q. Gordon gave you the money for that?

A. Yes, he did.

MR. HARRIGAN: May I have one moment, your Honor?

THE COURT: Yes.

BY MR. HARRIGAN:

Q. Now, Mr. Mezzanatto, directing your attention to the night of August 1 when you met with Agent Moreland, according to you you were just delivering a package to Gordon Shuster, correct?

A. Correct.

Q. Isn't it a fact, though, that you asked Agent Moreland to accompany you back up to San Bernardino County to get a pound?

A. Agent Moreland asked me if I could get another pound. I had no idea what he was talking about. Gordon was there with him, Gordon.

Q. You never asked Agent Moreland, "What are you talking about," did you?

A. I wasn't taking the question as it being directed to me, no.

Q. Isn't it a fact, though, that you said, "It will take us about six hours; hour and a half to two hours to drive up, hour and a half to two hours to get the pound, an hour and a half to two hours to get back down to Fallbrook; isn't that true?

[335] A. In the scheme of my time frames that is what it would take me, yes, to travel those distances.

Q. I wasn't asking you how long it would take you, isn't it a fact that is what you told Agent Moreland?

A. When I asked him to accompany me, yes.

Q. You did ask to accompany you?

A. I asked him and Gordon both to accompany me. I didn't know where I was going. They wanted to know how long it took me to get there and back. I told them. I didn't even know where we was going. This is Gordon's deal. I am playing along. I don't even know what is happening.

MR. HARRIGAN: No further questions, your Honor.

THE COURT: Any redirect?

MR. CHIER: Yes, your Honor.

Now, your Honor, may it be understood I am going to ask questions about the October 17th meeting because your Honor allowed it into evidence?

THE COURT: You may ask questions. I will rule on them as they come up.

MR. CHIER: I don't want to be in the position of waiving any objections I might have made by asking these questions.

MR. HARRIGAN: I don't know any objections he made other than relevancy and Kastigar.

MR. CHIER: Rule 408.

[336] THE COURT: You may ask about it.

REDIRECT EXAMINATION

BY MR. CHIER:

Q. Now, directing your attention back to October of 1991, just a couple of months ago, Mr. Mezzanatto, were you represented by another attorney on the 17th of October?

A. Yes, I was.

Q. And were you set to go to trial in this courthouse?

A. Yes. I had a trial date, yes, I did.

Q. And was the trial date close to October 17th?

A. Yes, it was.

Q. And did somebody suggest to you that you have a meeting with government agents?

A. Say—repeat that again.

Q. Was it suggested to you by anybody that you ought to have a meeting with government agents?

A. Yes, it was.

Q. Who suggested that to you?

A. My attorney.

Q. Now, did you spend any time with your then attorney preparing for this meeting?

A. None at all—can I retract that question? Very little if any at all.

Q. You have an estimate as to the amount of time you spent in discussion of the purpose of the meeting?

[337] A. With my attorney, approximately five minute brief.

Q. And was Mr. Harrigan there? Your interrogator earlier?

A. At the meeting, yes, he was. At the meeting with my attorney, no, he wasn't.

Q. I understand. I am speaking of the actual meeting itself, with the government agents.

A. Yes. With the government agents, Mr. Harrigan was, yes.

Q. Were there other government agents there?

A. Yes, there were.

Q. Who were they?

A. Officer John McKee and Tristan Moreland.

Q. Now, did your attorney suggest to you anything about the reason for having such a meeting?

A. Yes, it was to—it was entailed to reduce sentencing.

Q. You heard Mr. Harrigan bring up the matter of guidelines a little earlier?

MR. HARRIGAN: Objection. I wasn't referring to guidelines of sentencing. Guidelines of the meeting, not the guidelines.

THE COURT: Not the guidelines for sentencing, guidelines for the meeting.

MR. HARRIGAN: I object to any inquiry as to sentencing, your Honor.

MR. CHIER: He brought up the meeting, your Honor, and I am entitled to go into the purpose of the meeting, [338] whatever that purpose might be.

THE COURT: The question is proper as long as you state the guidelines of the meeting. That is all he was talking about, he was not talking about the guidelines.

MR. CHIER: I am actually going for the big guidelines.

THE COURT: That wasn't mentioned.

MR. CHIER: It was mentioned to Mr. Mezzanatto by the government agents.

THE COURT: I don't recall that being mentioned by an agent.

MR. HARRIGAN: I did not elicit that on cross.

THE COURT: The only guidelines I am aware of are the guidelines of the meeting.

MR. CHIER: It is not fair to not allow the witness to testify to his part of the meeting, your Honor. All we have now is the government has some meeting.

THE COURT: If you want to go into redirect, you think that affects his testimony, you may do so. I cannot think of how it would possibly affect his testimony. Do you think that affects his ability to testify here?

MR. CHIER: I think he is entitled to go into that if that was part of the purpose of the meeting.

THE COURT: That is not what the meeting was called for. That is not my understanding. You may lay a [339] foundation, "Did he tell you what the maximum punishment was," if you think it is relevant.

BY MR. CHIER:

Q. Was there some discussion, Mr. Mezzanatto, as to how this meeting could help settle your case that was then pending?

A. Yes. My attorney said that the guidelines entailed a five-year minimum mandatory sentence.

MR. HARRIGAN: Your Honor, I would object to any reference to the sentence in this case.

THE COURT: No, if he thinks it is relevant he can get into it, because it is pretty serious. I don't think it is relevant in the case because nobody ever mentioned it, there hasn't been any discussion about it.

MR. CHIER: This was discussed during the meeting, the meeting itself.

BY MR. CHIER:

Q. Mr. Mezzanatto, during the course of the meeting on October 17th, did one of the government agents say something else about the minimum mandatory sentence in the case?

MR. HARRIGAN: Objection. Leading. And that is irrelevant.

THE COURT: Did they say anything about that?

THE WITNESS: The government agent, if Mr. Harrigan is considered a government agent, yes, he did.

[340] THE COURT: He told you what the minimum sentence would be if you were found guilty?

THE WITNESS: He told me that it was—

THE COURT: No, I just asked you if that is what he said. Did he tell you what the minimum sentence would be if you were found guilty, that the court may impose?

THE WITNESS: Yes.

BY MR. CHIER:

Q. What did he tell you?

THE COURT: No, no. Did that affect your decision whether or not you talked with them?

THE WITNESS: Yes, it did.

THE COURT: Was it because of that you decided you didn't want to talk to them?

THE WITNESS: Yes, it was.

THE COURT: He may mention it.

BY MR. CHIER:

Q. What did he tell you about that, Mr. Mezzanatto?

A. He told me that I wasn't looking at a five-year minimum mandatory, he was looking at a ten-year minimum mandatory. And he offered me two years of a reduced sentence for coming in the debriefing if he accepted my answers of what it was that I was supposed to answer of his questions.

BY MR. CHIER:

Q. Did he reserve the—

[341] MR. HARRIGAN: Your Honor, I object to the relevance.

THE COURT: He may go into that. Shows his motive for not going along with it.

Next question.

BY MR. CHIER:

Q. Who reserved the final decision to determine whether they would allow you any time off of your sentence?

THE COURT: If you know.

THE WITNESS: Mr. Harrigan.

THE COURT: How can he do it? I am the judge.

THE WITNESS: Because Judge Thompson told me at the October 27th trial date—

MR. HARRIGAN: I object as to relevance. That is hearsay.

THE WITNESS: —That the government was the only person—

THE COURT: Just a moment.

THE WITNESS: —That could refrain from the sentencing guidelines, the judge had no control over it.

THE COURT: He may have misunderstood. That was not your meeting with Mr. Harrigan, was it?

THE WITNESS: Mr. Harrigan represents the government.

THE COURT: No, what Judge Thompson said. He wasn't [342] at the meeting with Mr. Harrigan, was he? Was Judge Thompson at the meeting with Mr. Harrigan?

THE WITNESS: No, he wasn't.

THE COURT: Anything he said came after the meeting?

THE WITNESS: Yes, that is true.

THE COURT: So that didn't affect your decision not to cooperate, did it?

THE WITNESS: But my attorney—

THE COURT: Wait, wait. That didn't affect your decision to be cooperative, though, did it? What Judge Thompson said. He wasn't at the meeting.

THE WITNESS: What Judge Thompson said, no. Judge Thompson confirmed what was told to me.

BY MR. CHIER:

Q. Mr. Mezzanatto, was it explained to you by Mr. Harrigan how the government had anything to say about the sentence that the court might ultimately give you?

A. Repeat that again?

Q. Yes. Did Mr. Harrigan explain how the government, the federal government, could influence the amount of sentence that you would receive if convicted?

A. Yes, he did.

Q. What did he say in that regard?

A. That he could make recommendations.

Q. Under some provision of law?

[343] A. I assume so, yes.

Q. Now, when you went to this meeting, how would you characterize the mood or atmosphere?

A. Intimidating. Unfriendly.

Q. Where was the meeting?

A. It was in Mr. Harrigan's back office.

Q. Let's just—I am sure these folks don't know what Mr. Harrigan's office is.

Was it in this building or in this complex of buildings?

A. Yes, it was in this building on the other side.

Q. The part that is at a right angle to this part?

A. Exactly.

Q. Who was in the room where this meeting was being held?

A. Mr. Harrigan, Mr. Moreland—Mr. Tristan Moreland—Mr. McKee, Mr. Merle Schneidewind, and myself.

Q. When you went into the room, were there questions put to you, sir?

A. Yes, there were.

Q. By law enforcement or by your own attorney?

A. By law enforcement officers. The one agent, John McKee, is the only one that spoke with me, besides Mr. Harrigan.

Q. Do you remember about how many questions were asked during that meeting?

A. Yes, approximately three.

Q. And do you remember did anybody in that room [344] characterize your answers to the questions?

A. Yes, they did.

Q. And how were your answers characterized, by whom?

A. By Mr. McKee that I was a liar.

Q. And, in fact, had you lied at that time?

A. On one of the questions, yes, I did.

Q. What was the question?

A. Where I picked up the package from.

Q. And what did you say in response to the question as to where you picked up the package from?

A. I told him I picked the package up from a friend of Gordon's named Uncle Bob.

Q. Did he characterize that as a lie?

A. Yes, he did.

Q. Were you asked any questions concerning the last time you had been at Gordon Shuster's house?

A. Yes, he did.

Q. What were you asked?

A. When was the last time that I was at Gordon Shuster's house.

Q. What did you say?

A. I said I was there to my recollection, a week and the day before the arrest.

Q. And was your answer characterized in some way by any of the agents that were present?

[345] A. Yes, it was.

Q. What did they say? Who said what?

A. Agent McKee stated, "Yes, I seen you there the day before."

Q. Well, when was it that you determined to get other advice concerning your rights in the situation?

MR. HARRIGAN: Objection. Irrelevant.

THE COURT: Sustained.

BY MR. CHIER:

Q. Did someone in this room cancel the October 17th meeting after your answers were characterized as lies on three or four occasions?

THE COURT: Do you mean did they terminate it?

MR. CHIER: Terminate. I am sorry.

THE COURT: Was the meeting terminated?

THE WITNESS: Yes, it was.

BY MR. CHIER:

Q. Who terminated the meeting?

A. Mr. Harrigan.

Q. Now, with respect to this pager that you bought, you paid $200 for it?

A. Yes.

Q. Did that include anything in addition to the pager?

A. In terms of service for the pager, or you mean like any gratuities and whatnot?

[346] Q. In terms of any service.

A. It did include like a three-month service on the pager, yes.

Q. Did it include anything else, as a premium or part of the package deal?

A. As far as any frills for the pager, I really don't think so.

Q. Now, who lived on Ironwood?

A. I did.

Q. Was that you?

A. Yes.

Q. And did you have any reservations whatsoever about letting it be known that Gary Mezzanatto resided on Ironwood at that particular time?

A. No, I did not.

Q. Now, the letter which has been marked Exhibit No. 6, a letter to the paging company. Do you remember Mr. Harrigan—

A. Yes, the last letter of reference that he explained to me.

Q. What happened to the pager after August 1st, 1991? Who had it?

A. I assume the agents had it.

Q. And was your account with the paging company continuing to accrue?

[347] A. Yes, it was.

Q. And did you desire to cancel the service so you would no longer be liable for it?

A. Yes, I did.

Q. Is that what this letter is all about, this Exhibit 6?

A. Yes, it is.

Q. Do you know who wrote the letter?

A. No, I do not.

Q. Now, did you ever say in the meeting on October 17th, 1991 that you knew the package that you took to Mr. Shuster contained amphetamine—that you knew at the time you took the package to Mr. Shuster that it contained methamphetamine?

THE COURT: That is vague. Ask that one again.

MR. CHIER: I'll rephrase it.

THE COURT: You don't have to rephrase, just make it clear.

BY MR. CHIER:

Q. Directing your attention to the October 17th, 1991 meeting in the room with Mr. Harrigan and Mr. McKee and Mr. Moreland, did you ever say during the course of that meeting that you knew at the time you delivered the package on August 1st that you were delivering a package of methamphetamine?

A. At the time of delivering the package to Gordon Shuster, I had no knowledge of what was in the package, methamphetamine, no, I did not.

[348] Q. Did you ever tell them that you did know?

A. I told them I found out after the fact that that is what the package did contain, yes.

MR. CHIER: I have no further questions.

THE COURT: Mr. Harrigan.

RECROSS EXAMINATION

BY MR. HARRIGAN:

Q. Mr. Mezzanatto, at the October 17th meeting of this year, you were represented by counsel; is that right?

A. Counsel was there. Counsel said nothing to me at the meeting inside the meeting.

Q. You never talked at all at the meeting; is that right?

A. In the meeting?

Q. Yes. With the agents.

A. I talked to you guys, yes.

Q. And your counsel made some comments to you during that meeting, correct?

A. I don't recall.

Q. Isn't it a fact when I told you about the parameters of this meeting, I told you you were under no obligation to speak to us; isn't that right?

A. I don't recall.

Q. Isn't it a fact that the government didn't seek you out to have you talk to us; isn't that right?

A. The government was interested in talking with me, yes.

[349] Q. That was something that you and your attorney decided to do, correct?

A. That was the advice of my attorney, to talk with the government.

Q. And isn't it a fact throughout that meeting, on several occasions when the agents questioned your truthfulness, you were given the opportunity to speak to your attorney; isn't that right?

A. No. Not per se each question that was asked, no.

Q. Mr. Mezzanatto, isn't it a fact you were given more than one chance to tell the agents what occurred on August 1st; isn't that right?

A. I was asked more than one question. If that is a chance, yes.

Q. I am talking about the October 17h meeting, correct?

A. Correct.

Q. You said the only lie that you told them was you told them Uncle Bob gave you this package; is that right?

A. That is not what I said.

Q. What were the lies that you told the agents at that meeting?

A. That was one. But I don't remember actually lying, I was accused of lying on my answers. I was told—

Q. Your testimony was—

A. —life goes on, let's go watch the Bucks, Braves game.

[350] Q. Your testimony is now you never lied in the meeting; is that right?

A. I did state a lie in that meeting, yes.

Q. My question is simple. What was the lie?

A. That I picked the package up from Uncle Bob.

Q. Isn't it a fact that you also told the agents when they asked you the last time you had been at Gordon Shuster's residence in Fallbrook was over a week prior to your arrest; isn't that true?

A. To my recollection, I told them that I could remember being there a week prior. And then he said, "I seen you there the day before, he is lying again."

Q. In other words, you said you were there a week before, and we told you, "No, you were there the day before," right? That was the second lie, right?

A. No, that was the first question, approximately, that came out to me, or the second question.

Q. That is another lie you told them, correct?

A. No. I don't understand what you are saying, that is another lie I told you.

Q. It is a simple question, Mr. Mezzanatto. Did you tell the agents that the last time you were at the Fallbrook residence was over a week before?

A. To my recollection, I don't remember.

Q. You don't recall. Isn't it also a fact that you first [351] told the agents that you helped Gordon Shuster move equipment around at his residence?

A. I was told that I was—

Q. That is yes or no.

A. No—restate the question, please.

Q. Yes or no. Isn't it true that you told the agents at the October 17th meeting that prior to August 1st you had been out at Gordon Shuster's residence helping him move equipment around?

A. I was helping Gordon move his personal possessions from one property to the next and to a storage truck.

Q. And you at first indicated to the agents that you didn't know what this equipment was used for; isn't that right?

A. Exactly.

Q. Then you were given an opportunity to speak to Mr. Schneidewind; isn't that right?

A. Are we talking about the meeting?

Q. We are talking about the October 17th meeting.

A. Yeah. I was told, "Merle, get him out of here."

Q. You were given an opportunity to speak with your attorney, right? After you told us that?

A. Yes.

Q. Then we asked you again, and you told us that at some point prior to August 1st you realized Gordon Shuster was manufacturing methamphetamine; isn't that true?

[352] A. No, that is not.

Q. Now, one last question in regard to the pager. You said that letter was written simply to cut off your pager service, right?

A. Correct.

Q. And you never asked anyone to say that pager was stolen?

A. No, I never told anybody to say it was stolen. I inquired as to how the paging service is stopped so I would not acquire a bill for not even having it.

Q. You don't know how that got in the letter?

A. I do not know, no.

MR. HARRIGAN: No further questions, your Honor.

THE COURT: Anything further, sir?

MR. CHIER: Nothing further, your Honor.

THE COURT: Thank you very much, sir.

Let's take an afternoon recess. We will be in recess until ten after the hour.

Remember the admonition I give you earlier. I will be instructing later, but you are not to be concerned with any punishments that the defendant my receive, that is left entirely up to the court. It doesn't have anything to do with your decision. Okay? Ten-minute break.

(Whereupon, the following proceedings were had at the bench, outside the hearing of the jury:)

MR. HARRIGAN: May we have a brief sidebar?

[353] THE COURT: How many more witnesses do you have?

MR. HARRIGAN: Are you going to call Agent Moreland? We brought him specifically for you to call, he has been waiting around for three hours now.

MR. CHIER: These people from Fallbrook have been waiting.

MR. HARRIGAN: The only reason, if you are calling a couple of witnesses, doesn't look like you will have him.

THE COURT: He says he is short.

MR. CHIER: I have the old folks from Rainbow.

THE COURT: Are they character witnesses?

MR. CHIER: No, they are actually corroborating witnesses.

MR. HARRIGAN: Can I have an offer as to their testimony, your Honor?

THE COURT: What will they be testifying to? He wants an offer of proof.

MR. CHIER: An offer of proof? As to—I have to—why is that, your Honor, that I have to make an offer of proof?

THE COURT: Tell him what you expect them to testify to.

MR. CHIER: Why should I have to do that?

THE COURT: Everybody is entitled to that. You are entitled to it on his side. That is what an opening [354] statement is about.

MR. HARRIGAN: Your Honor, maybe I can cut this short, because I think I talked to Mr. Chier about what the testimony would be already.

He seemed – correct me if it is wrong – but I expect him to call Bernard and Lorene Cook, who were the owners of the property that Gordon Shuster resided at, to testify to the following; that Gordon Shuster duped them when he was going to buy the property out there, and told either the husband or both of them that he was simply making explosives out there.

My problem with allowing that testimony, it is not probative as to this defendant's state of mind what Mr. and Mrs. Cook thought. They can't testify as to what his knowledge was, first.

And, second, the trial is not about the manufacture of methamphetamine, it is about what did he know about that package. It is not corroborative at all for someone to say, "Hey, because duped me, he duped somebody else."

THE COURT: You never heard of an offer of proof before?

MR. CHIER: I have heard about it, your Honor, but to have to make it for corroborative witness in a criminal case, I must say that I can't imagine that I would be foreclosed from presenting a defense witness.

[355] THE COURT: If it is not going to be material, why present it? Why waste the jury's time and your time?

The question is what they are going to testify to, and why is it relevant? Everybody is entitled to have that.

MR. CHIER: What counsel says is essentially correct; however, there is more to it than that.

THE COURT: Show us how your client is implicated in it.

MR. CHIER: The witness, Mrs. Cook, will establish – will corroborate my defendant in that this individual, Gordon Shuster, is persuasive, is cunning, is

convincing. Told them he was working for the CIA or a government agency. Told them he was manufacturing explosives. That is corroborative of what my client believed.

And what he believed, your Honor, is his state of mind; and his state of mind is probably the most fundamental issue in this case.

THE COURT: Do you have a case on point?

MR. CHIER: No, I don't, your Honor.

THE COURT: I don't think that is admissible to show because somebody believes one person that your client has to believe him too.

MR. CHIER: My client – no. My client's belief is independent of what Mrs. Cook believes.

[356] THE COURT: Hold that in mind. Think about that.

MR. CHIER: My client –

THE COURT: Why should Mrs. Cook be able to get up on the stand and testify as to what she believed?

MR. CHIER: Because it tends to establish that this man was making these statements. And that they were –

THE COURT: –Did she hear him make the statements in your client's presence?

MR. CHIER: Did Mrs. Cook hear what?

THE COURT: What that person said in your client's presence?

MR. CHIER: I don't believe I could establish that, your Honor.

THE COURT: Then it doesn't help us at all.

MR. HARRIGAN: It would be much the same as me calling somebody else that Gordon Shuster worked with to show this guy knew, so Mr. Mezzanatto should know.

THE COURT: You are ahead right now.

MR. CHIER: Pardon me, your Honor?

THE COURT: He is ahead right now.

MR. CHIER: I am not trying to show that she knew anything, because it is not a question of knowledge, it was all B.S.

We are not talking about knowledge about anything, we are talking about the belief, and that representation.

[357] THE COURT: He is here to tell us that he believed it. She can't help us.

MR. CHIER: But he is the defendant, your Honor. It is very helpful in a criminal case if there is some totally innocent –

THE COURT: Well, I have ruled this way, and the fact that Shuster told somebody else the same thing he told your client is not relevant to your client's belief, it is not helpful.

MR. CHIER: It is not helpful?

THE COURT: No. No one can testify to what his belief is except him.

MR. CHIER: If she can describe the person as being – his belief in this regard as to be somewhat reasonable.

THE COURT: He can tell the jury. If they believe him, that is it.

MR. CHIER: If I can establish through the person who was victimized by Mr. Shuster, who was basically conned into letting him use their property for two years, and were lied to by this man and they believed him, that he was convincing, then it is not going to appear –

THE COURT: Show me in a book. You have about ten minutes to show me in the book. Here is the book.

MR. HARRIGAN: Your Honor, real briefly, the only [358] other side thing I am concerned about, just for the record, is this issue he raised about Kastigar and the statements coming in.

I would like to state for the record that when this debriefing occurred on October 17th, Mr. Mezzanatto was

told three things – and I don't believe this needs to be before a jury.

THE COURT: You are entitled to put that in.

MR. HARRIGAN: What he was told was the following:

That it wouldn't be used against him unless he lied to us. He could be subject to false statements for perjury.

That if he somehow he didn't cooperate with us, it was called off, he ended up going to trial and he took the stand and told us something different than what he told us there, we would use it to impeach him.

And, third, we made it very clear to the attorneys present that we not go through a Kastigar hearing, that we would make derivative use of any evidence he provided us, which essentially was nothing.

THE COURT: If that is what you want to present to the jury, that is fine.

MR. HARRIGAN: I don't want to present it to the jury, but the problem I have is that Mr. Chier did a last-minute motion that Judge Thompson rejected. And he raised now –

[359] THE COURT: The jury doesn't know what Kastigar means.

MR. HARRIGAN: That is right. But I am saying, for the purpose of my record, I want to make it clear that there was an agreement that there would be no Kastigar hearing at the time.

THE COURT: Who asked for him to come forward and come to you?

MR. HARRIGAN: His attorney, Merle Schneidewind.

THE COURT: That is up to you. I have nothing to do with it.

MR. CHIER: What time—I was going to make a phone call to my brother-in-law, who is usually much faster. Can I do that, Judge?

THE COURT: Sure.

Right now, I can't see where the testimony is admissible.

MR. CHIER: Can I have until 3:20?

THE COURT: You have until 3:20.

(Recess.)

MR. CHIER: My decision to call Mr. Moreland or Mr. McKee will be influenced greatly by your decision in respect to the witnesses.

THE COURT: With reference to someone else testifying that this man lied to them and therefore that is [360] evidence to help you show that he lied to your client, or that they believed him and therefore your client believed them, that is not admissible. That is not relevant.

So I would rule, no, that evidence is not admissible, so there is no need to call them. You made the offer of proof.

(Discussion off the record between the defendant and his counsel.)

MR. CHIER: Could I just flesh out the offer of proof as to these people, just for the record?

THE COURT: I thought you had, and that is what you told me. You are entitled to do that, certainly. Make your record clear.

MR. CHIER: Let me just think out loud here, Judge.

I would offer to prove through witness Lorene Cook, who is present in the hallway, that she has lived in the community of Rainbow for 20 years, more or less.

That she and her husband, Bernard Cook, own 32 acres of property in an isolated, secluded part of the northern county of San Diego.

That approximately two years ago they responded to an ad by an individual looking for property to buy in a remote, secluded area. That the person—that the advertiser

turned out to be none other than the self-same Gordon Shuster, who has figured prominently in this case, at [361] least by name.

That Mr. Shuster, through charm, persuasion, salesmanship, force of personality, insinuated his way onto the property, together with a house trailer and about four acres of miscellaneous personal property, without paying any rent, and by making promises of easy money and lucrative investments to Mr. and Mrs. Cook.

That on numerous occasions, Mr. Shuster represented to Mrs. Cook, or to Mr. Cook in the presence of Mrs. Cook, that he was employed by the CIA, on some occasions, on other occasions that he was employed by Special Forces.

That his father, that is to say the father of Gordon Shuster, was a highly-ranked individual in the United States military, I believe army.

That one of the assignments being worked on by Mr. Shuster at that location was the manufacture of a plastic type of explosive which would not be—which would not constitute or create a great risk for property or persons on the premises because of the need for a detonator, a specialized kind of detonator for the plastic, which should therefore allay any fears that people might have of being blown to bits by this plastic.

That Mr. Shuster was, according to Mrs. Cook, convincing and persuasive, and that she believed that he was engaged in this type of activity, based on the strength of [362] his representations, and based upon what she perceived to be the unorthodoxed manipulation of substances on the property within either view of the house resided in by the Cooks or at least within odor of their house.

And that, for all of these reasons, the testimony concerning what Mr. Shuster did vis-a-vis the Cooks is relevant and exculpatory as to Mr. Mezzanatto on the issue

of his specific intent; to wit, his knowledge of the nature and character of the substance that he was delivering.

That would be my offer of proof, your Honor.

THE COURT: Would that be as to both of the parties?

MR. CHIER: That would be as to both of the witnesses, your Honor.

THE COURT: Does he know them?

MR. CHIER: Does he know them? Only as a result of being present during—I think this trial started—no, Monday night we went there and he met them for the first time. He had seen them, I think, once.

THE COURT: Then they never told him these things before he got involved in this matter.

MR. CHIER: We did not know that the people had been telling him—

THE COURT: Listen to my question.

MR. CHIER: All right.

THE COURT: Did those folks ever talk to your client [363] before he got involved with this drug transaction?

MR. CHIER: Vis-a-vis these representations by Mr. Shuster? No.

THE COURT: Then it is not relevant. I would rule it is inadmissible.

MR. CHIER: All right.

THE COURT: So the other thing you have, you have two government witnesses. Do you want to call them for your case?

MR. CHIER: Under the circumstances, I think I won't.

THE COURT: Then you are prepared to rest?

MR. CHIER: I am prepared to rest, and I have some jury instructions that I strung together.

THE COURT: What I propose to do is—do you have rebuttal?

MR. HARRIGAN: I have Agent Moreland.

THE COURT: Let's get the jury in. You say you rested, and we will get the rebuttal in.

MR. HARRIGAN: Rebuttal today?

THE COURT: Yes, I would like to get it out of the way today.

MR. CHIER: I better excuse these witnesses, Judge.

THE COURT: Go ahead.

(Whereupon, the following proceedings were had [364] in open court, in the hearing of the jury:)

THE COURT: All parties are present.

Attorney Chier, you are ready to rest your case?

MR. CHIER: Yes. The defense rests.

THE COURT: Do you have any evidence you wish to have admitted that has not been admitted, any exhibits?

MR. CHIER: May I look at Defendant's A, please?

THE COURT: Sure.

THE CLERK: Four pages of Mr. Moreland's rough notes.

THE CLERK: You have them, I don't have them.

That was marked, your Honor, yesterday. It has not been received in evidence yet.

THE COURT: We will go over whether we will receive that or not later.

We will go to rebuttal, now, folks.

MR. HARRIGAN: The government would call Tristan Moreland.

THE CLERK: State your full name for the record. You are reminded you are still under oath.

THE WITNESS: Tristan Moreland.

DIRECT EXAMINATION

BY MR. HARRIGAN:

Q. Agent Moreland, you understand you are still under oath?

A. Yes, sir.

[365] Q. Agent Moreland, were you present at a meeting on October 17th at my office?

A. Yes, I was.

Q. U.S. Attorney's office?

A. Yes, sir.

Q. Who else was present at that meeting?

A. Agent McKee was there. Mr. Mezzanatto, and his former attorney, I believe his name was Merle Schneidewind. And yourself.

Q. And what was the purpose of that meeting?

A. The purpose of the meeting was that Mr. Mezzanatto and his attorney had come to the government and asked or, basically, requested a meeting. That he decided he wanted to cooperate with the government, and basically provide some information in hopes he might receive some type of consideration for sentencing in the case.

Q. How long did that meeting last, do you recall?

A. Altogether, 15, 20 minutes, total.

Q. And during that meeting, were any guidelines set down by the government as to—by myself as to the parameters?

A. Yes, there were.

Q. What did I instruct Mr. Mezzanatto?

MR. CHIER: I am going to object to this on the grounds of self-serving hearsay. Irrelevant.

THE COURT: Overruled. It was part of the meeting [366] and I allowed you to go into that facet, so they are entitled to come back with more information about it. Overruled.

THE WITNESS: Basically that Mr. Mezzanatto would have to provide information.

That anything he told us would have to be truthful. Anything he lied about, of course, he would be subject to being charged with false statements.

And if he decided to later take the stand in his defense, anything that he might say at this meeting could be used to—basically for perjury reasons. If he told us one thing at that meeting and later told us another thing and they were contradictory to each other, that that could be brought up in a trail setting.

He was reminded that if he decided to plead guilty, of course, he would receive some consideration for any truthful information.

That if we were able to use any of his information at a later date, that further consideration may be given at a later time.

I think he was also reminded of—we referred to something in a Kastigar meeting about some type of—the information being used at a later time. I don't recall all of the details of that particular area.

BY MR. HARRIGAN:

Q. All right. Did I say anything to Mr. Mezzanatto about [367] his obligations to talk to the government?

A. Basically I believe you just told him that he had no obligation to talk to us. I mean, you gave him, basically his rights under Miranda, the same when we arrest somebody. You told him he didn't have to talk to us.

But you also told him that none of the information would be used against him in your case in chief, only if he lied and he took the stand. Or if he lied to us, we might use it as false statements against him.

Q. What did Mr. Mezzanatto tell you and myself at that meeting about his involvement with methamphetamine?

A. Basically he started off by telling us that he had only dealt ounce quantities of methamphetamine prior to me meeting him on August 1st.

He said that this was the first time he ever dealt a pound of methamphetamine. And he knew, in fact, what he delivered to me was methamphetamine.

Q. What did he describe as his role in this August 1st incident?

A. He said that he was acting basically as a broker. He said he had gone to a person by the name of Uncle Bob.

And he said that the dope that he had gotten from Uncle Bob was actually Gordon Shuster's, somehow it had come from Gordon or—I don't know if he knew Gordon made it, but he said it was Gordon Shuster's.

[368] And that he had gone to Uncle Bob and obtained the pound from Uncle Bob, and then brought it down to me.

Q. What else did he say in regards to any methamphetamine lab at Gordon Shuster's residence?

A. I believe we first questioned him about what his involvement was out there.

He stated that—the first time we talked to him he said he had moved some stuff around out there and helped set some stuff up, and had done some work like that for Gordon out there, and really didn't know anything about the manufacturing.

Then basically Agent McKee and myself didn't believe him at that point and confronted him with our disbelief of that, based on other information we had.

Q. What did you do at that point?

A. Right at that point he decided to leave the room with his attorney, and they came back a couple of minutes later.

And we again asked him—I think we asked him something about, "were your fingerprints going to be found on any of this glassware?" So on and so forth.

Then he admitted that, yeah, he had helped handle some of the glassware and help set it up, and he knew it was a methamphetamine lab.

Q. All right. At any point in that meeting did you ask, you or Agent McKee, ask defendant Mezzanatto when he had last [369] been at Shuster's property?

A. Yes. We got to the point where I think we were both getting a little frustrated. I decided to ask him a simple question. I was testing whether he could be truthful about anything.

I asked him specifically, "when was the last time prior to August 1st you were at the residence of Mr. Shuster?"

Q. What did he say?

A. He stated it had been at least a week prior to the August 1st date.

Q. After he stated that, what did you or Agent McKee say?

A. We accused him, basically, of lying about that.

Agent McKee told him that we had seen his vehicle out there the day before and knew he had been there.

Then he started changing his story and saying, "Yeah, maybe I had been out there the day before."

At that point we just decided to terminate the meeting.

Q. At any time during that meeting was defendant Mezzanatto given the opportunity to speak with his then attorney, Merle Schneidewind?

A. Was he given the opportunity to speak with his attorney?

Q. In private.

A. Yes, sir.

MR. CHIER: Objection.

THE COURT: Overruled.

[370] BY MR. HARRIGAN:

Q. How many occasions would you estimate?

A. I remember two specific occasions where they were privately speaking with each other outside of the room from us.

There may have been a third, but I remember the two.

Q. When you say this meeting lasted 20 minutes, that was the actual time that you talked to him? The total time lasted much longer, correct?

MR. CHIER: Objection, leading.

THE COURT: It is leading, but I think he is trying to clarify it, so that is a proper question to ask.

MR. CHIER: He is trying to correct his own estimate of 40 minutes.

THE COURT: No, I think he is just trying to make it clear for the jury. Overruled.

THE WITNESS: When I spoke about the 20-minute meeting, I was talking about from the time that basically we sat at the table, and the total length of conversation. There were ten-minute periods, I think, where he left with his attorney.

Our conversation with Mr. Mezzanatto was actually no more than 20 minutes in time.

BY MR. HARRIGAN:

Q. Now, at any point in time, did Gary Mezzanatto ever [371] mention anything about the fact that he thought Gordon Shuster was making explosives out there?

A. No, not to me. Not in that room.

Q. Did he ever mention anything about the CIA?

A. No, he didn't.

Q. Did he ever mention anything about turning seawater into gold?

A. No, he didn't.

MR. HARRIGAN: No further questions.

THE COURT: Counsel?

MR. CHIER: I have a few, your Honor.

CROSS EXAMINATION

BY MR. CHIER:

Q. Do you remember on October 17th, 1991 at some time during the course of this meeting with you and Mr. Schneidewind and Mr. Mezzanatto that he said that he was afraid for his life and the life of his family?

A. I believe initially in the meeting he mentioned something about – something about that, yes.

Q. Did you put that in the report that you made of this meeting?

A. No, I didn't.

Q. Did the report include any reference to the question about fingerprints on the glass?

A. I don't recall putting that in the report.

[372] Q. Did the report include any reference to this alleged statement that he knew prior to August 1st there was a laboratory for the manufacture of controlled substances in place at that location?

A. I don't recall. I don't think that is in the report, but I don't recall.

Q. And did you know if there was any reference in the report of this meeting to any statements by Mr. Mezzanatto that he – his involvement at that location was limited to moving stuff around?

A. Can you ask that again?

Q. Yes, I can. That was a bad question.

I think you testified on direct rebuttal that Mr. Mezzanatto's stated involvement at this meeting was that he had moved some stuff around at the request of Mr. Shuster at this location.

A. Initially.

Q. Initially.

A. Initially. Right, that is what we talked about.

Q. And then, supposedly, he was braced with this evidence of fingerprints on the glass, and he changed his statement; is that correct?

A. Well, no. He went out and had a meeting with his attorney, and I am not sure if before that meeting or after, I am not even positive we said your fingerprints were found [373] on the glass, but I think what we said was, "We have information, maybe, that you had handled some of the glassware."

I don't know if I actually said to him, "Your fingerprints are going to be found on the glass," or anything like that.

I think it was just that there was some indication that we had information that, in other words, he had handled the glass.

Then after the meeting with the attorney where we had basically told the attorney—

Q. Wait, wait, wait. I think we got a little out of control here.

I just want to know if it was at the point that you said something about "fingerprints on the glass" that it appeared to you he was changing his statement?

A. No, I don't think it was. I don't recall it being at the same point.

Q. If, in fact, anything had been said at that meeting to Mr. Mezzanatto about fingerprints being on the glass, that would have been a misrepresentation, wouldn't it? There were no fingerprints, were there?

A. I don't believe at that meeting I had any knowledge whether there were or not.

All I know is that there was an attempt to take [374] fingerprints, I don't know if fingerprints were actually taken or not. But I know there were plenty of opportunities that that was possible.

Q. And you can sure tell when fingerprints have tried to have been lifted off of an object, can't you?

A. Generally.

Q. It makes a mess, doesn't it?

A. Not necessarily. It depends on the method that you use.

Q. How about off plastic?

A. It all depends on what method you use to remove the fingerprints.

MR. HARRIGAN: Objection. Lack of foundation. Agent Moreland is not a fingerprint expert and is not competent to testify to this.

No offense.

THE WITNESS: I agree.

THE COURT: Just a moment. You are in the area where the fingerprints were lifted off of the glass?

MR. CHIER: Yes.

THE COURT: And you are going to ask him if he knows?

MR. CHIER: Yes.

THE COURT: I think you are entitled to do that, but then—

MR. CHIER: I am not going to push it.

[375] THE COURT: All right.

BY MR. CHIER:

Q. Do you know whether or not fingerprints were lifted off of the dope in this case, the narcotic?

A. We are talking about the Exhibit 1?

Q. Any latent prints lifted off of the package?

A. I don't know for sure, no.

Q. Do you know if any were requested?

A. I don't know that either.

Q. Let me ask you one other question. This meeting on October 17th, could that be characterized, kind of, as a game of "Liar's Poker"?

MR. HARRIGAN: Objection. Argumentative.

THE COURT: That is unintelligible, too. What is Liar's Poker?

MR. CHIER: I will withdraw the question, your Honor.

May I have one moment?

THE COURT: Yes, sir.

MR. CHIER: I do have a question.

THE COURT: Go ahead.

BY MR. CHIER:

Q. I have just a little bit of a question here with respect to the art of report writing.

One of the things that the federal law enforcement [376] officers do a lot of is report writing; isn't that true?

A. I would say that is true.

Q. Especially when there has been an arrest and prosecution pending?

A. That is true.

Q. And in these narcotic cases, the reports are done on kind of a printed format called a "DEA-6"?

A. If DEA is—yeah, right. That is their form for that, yes.

Q. In this particular case, you used that form, did you not? If you know.

A. I believe eventually it was typed on one of those forms.

Q. Those reports have several purposes, one of which is to refresh the recollection of the officer/writer of the reports if he should be testifying at some time quite a bit later than the incident, right?

A. I would say that is correct.

Q. Another purpose is for it to include, as complete as possible, a compilation of facts so that the agent who may be questioned about the report isn't embarrassed, right? About the omission of certain facts?

A. Not necessarily. I mean, there is oftentimes where you omit certain facts intentionally, you don't want them in a certain report. It all depends on the particular report.

Q. When a report then says that somebody essentially [377] provided certain information, does that mean that that is merely the conclusion of the writer of the report as to what was said by the person? Essentially, does that mean—what does that mean?

MR. HARRIGAN: Objection as to relevance.

THE COURT: No.

MR. HARRIGAN: I will withdraw my objection. I am sorry.

THE WITNESS: What exactly was your question?

BY MR. CHIER:

Q. My question is this; if you were to say that somebody provided essentially the following information, would that be the writer's conclusion as to what the person was talking about?

A. It would probably be the writer's conclusion as to information the writer felt was pertinent about what the person talked about, pertinent to the case or pertinent to the debriefing, or, you know.

Q. When the word "essentially" is used, it is used in the sense of reducing something to its essence?

A. As to what the writer's essence?

Q. Right.

A. What the writer believes is the essence.

Q. Wouldn't that be?

A. I would say that is a fair assumption.

[378] Q. So when the report in this case concerning this October 17th meeting says that Mezzanatto "essentially" provided the following, that means that there was some subjective evaluation by the writer of the report; isn't that correct? As to what the essence was of the information?

A. Well, yeah. That is anytime anybody writes, it is subjective.

Q. This is not a criticism.

A. Yeah. It is hard to answer yes or no.

Q. Now, do you know when the report of the October 17th meeting with Mr. Mezzanatto was actually prepared, Mr. Moreland?

A. I don't recall the exact date, but it was probably early this month or late November.

Q. December 5th, 1991, does that refresh your recollection?

A. That could be correct, yes.

MR. CHIER: I have no further questions.

MR. HARRIGAN: No questions.

THE COURT: Thank you very much, sir.

THE WITNESS: Thank you, your Honor.

THE COURT: Is there any other rebuttal, Mr. Harrigan?

MR. HARRIGAN: That is it, your Honor.

THE COURT: Do you have any surrebuttal?

MR. CHIER: Are you going to disallow the [379] questioning of Mr. Harrigan? I was going to call Mr. Harrigan as a witness.

THE COURT: He is a lawyer in the case, you can't call him as a witness. You had the person that was closest.

Do you have any other evidence you want to offer?

MR. CHIER: No, your Honor.

THE COURT: That is all the evidence, folks.

I propose this, gentlemen, I propose to do this; let the jury go home now, and we will have you back tomorrow morning at 9:00 to go over the instructions. We will have the jury in at 10:00, start the arguments, and we should have them out by noon.

MR. CHIER: Sounds good.

THE COURT: That is all the evidence in the case, and the lawyers and I have to get together about the rules of law.

Please come back tomorrow morning at 10:00, then we will let the lawyers argue the case to you.

And don't make any plans for lunch tomorrow, you can make those later and decide you want to go out to lunch or have sandwiches brought in to you.

We will see you tomorrow morning at 10:00. Have a pleasant evening, and remember the admonition I gave to you earlier.

I will see counsel tomorrow morning at 9:00.

[380] If you have any other instructions, I appreciate you submit to me at this time.

MR. CHIER: I have some, your Honor. They are not in the format I like to submit them in.

THE COURT: Just give them to Mac before you leave, please.

MR. CHIER: Yes, your Honor.

Supreme Court of the United States

No. 93-1340

UNITED STATES, PETITIONER

v.

GARY MEZZANATTO

ORDER ALLOWING CERTIORARI. Filed April 18, 1994.

The petition herein for a writ of certiorari to the United States Court of Appeals for the Ninth Circuit is granted.

April 18, 1994

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